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COUNCIL OF THE CITY OF PHILADELPHIA

3

COMMITTEE ON PUBLIC SAFETY

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Room 400, City Hall
Philadelphia, Pennsylvania
Tuesday, December 2, 2008
9:20 a.m.

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PRESENT:

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COUNCILWOMAN DONNA REED MILLER, CHAIR

COUNCILMAN BILL GREENLEE

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COUNCILMAN CURTIS JONES, JR.

COUNCILMAN FRANK RIZZO

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COUNCILWOMAN JANNIE BLACKWELL

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BILL 080795 - An ordinance amending Section
10-819 of The Philadelphia Code, entitled
"State of Emergency," to expand upon the
measures that the Mayor may take in an
emergency...

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COUNCILWOMAN MILLER: Good

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morning, everyone. My name is Donna Reed

4

Miller and I am the Chair of the Public

5

Safety Committee. The Committee on

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Public Safety is now in session.

7

Would the Clerk please read the

8

title of the bill.

9

THE CLERK: Bill 080795, an

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ordinance amending Section 10-819 of The

11

Philadelphia Code, entitled "State of

12

Emergency," to expand upon the measures

13

that the Mayor may take in an emergency,

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prohibit the violation of orders issued

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in connection with the declaration of

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emergency, revise the penalties for

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violations, provide definitions, and make

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technical and other changes, all under

19

certain terms and conditions.

20

COUNCILWOMAN MILLER: Thank

21

you.

22

Let the record reflect that

23

this Public Safety Committee does have a

24

quorum. In attendance to my left is

25

Councilman Frank Rizzo, Councilman Bill

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2 Greenlee, and to my right, Councilman
3 Curtis Jones.

4 I'd like to begin by thanking
5 all in attendance.

6 With all the emergencies that
7 we are seeing, both nationally and
8 abroad, it is no doubt that Philadelphia
9 must be prepared. Emergencies can come
10 in all forms. They may be natural such
11 as Hurricane Katrina, manmade such as the
12 terrorist attack on the World Trade
13 Center or anything in between. For that
14 reason, it is important for Philadelphia
15 to be prepared.

16 This bill expands on current
17 legislation enacted in 1967 that has
18 never been amended. The bill prohibits
19 public gathering, restricts the movement
20 of people and transportation in and out
21 of the City, prohibits the sale and/or
22 service of alcohol and gasoline,
23 prohibits the sale or illegal carrying of
24 firearms, and it establishes a curfew.

25 The Mayor shall be authorized

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2 to declare a state of emergency subject
3 to ratification by City Council, and
4 unless otherwise authorized by this
5 ordinance, the state of emergency shall
6 last no longer than two weeks.

7 With that in mind, would any
8 Councilmember like to make an opening
9 statement?

10 COUNCILMAN RIZZO: I have a
11 question.

12 COUNCILWOMAN MILLER: No, no
13 questions yet.

14 Okay. We'll have our first
15 witness. MaryAnn, I think you are the
16 first -- well, both of you actually can
17 come up to the table.

18 (Witnesses approached witness
19 table.)

20 COUNCILWOMAN MILLER: Good
21 morning. Please state your name and any
22 other identifying information for the
23 record.

24 MS. TIERNEY: My name is
25 MaryAnn Tierney. I'm the Deputy Managing

1 12/2/08 - PUBLIC SAFETY - BILL 080795

2 Director for Emergency Management.

3 LIEUTENANT HEALY: Good

4 morning. My name is Lieutenant Francis

5 Healy on behalf of Police Commissioner

6 Ramsey.

7 COUNCILWOMAN MILLER: Please

8 proceed with your testimony.

9 MS. TIERNEY: Thank you. I

10 want to thank Chairwoman Miller and the

11 members of the Committee on Public Safety

12 for holding a hearing on Bill No. 080795,

13 which proposes modifications to Section

14 10-819 of The Philadelphia Code, entitled

15 "State of Emergency." Today I will be

16 discussing with you the reasons the

17 existing Code is insufficient to support

18 the City's response and recovery needs

19 following a large-scale energy, share

20 with you examples of gaps contained

21 within the existing Code, discuss the

22 importance of filling those gaps, and

23 provide you with information on the

24 proposed changes to the current Code.

25 In the increasingly complex and

1 12/2/08 - PUBLIC SAFETY - BILL 080795
2 continually changing world to public
3 safety and disaster response and as
4 highlighted, as you said, Councilwoman,
5 during recent disasters such as Hurricane
6 Katrina and the attacks on the World
7 Trade Center, in order to effectively
8 support the response to and recovery from
9 a large-scale emergency, a jurisdiction
10 like Philadelphia must have the
11 capability and flexibility to make the
12 many and often unanticipated demands
13 placed upon it.

14 Over the past two years, the
15 City has made great strides in enhancing
16 its ability to prepare for or respond to
17 and recover from large-scale emergencies
18 and is continually adjusting to meet the
19 new and complicated challenges we face
20 today. To further enhance this ability,
21 the Managing Director's Office of
22 Emergency Management, in conjunction with
23 Police and Fire Departments, reviewed the
24 existing Philadelphia Code, entitled
25 "State of Emergency," to ensure that it

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2 afforded the City sufficient authority
3 and flexibility to preserve and protect
4 public safety following a large-scale
5 disaster.

6 What was immediately revealed
7 upon this review was that unlike the
8 City's public safety agencies' strategy
9 to work to improve over time to meet
10 operational needs, the "State of
11 Emergency" Code section provision has
12 been unchanged since the day it was
13 enacted in 1967. Much has changed in the
14 emergency response and public safety
15 arenas over the past 40 years, and the
16 section of the Code that ultimately
17 defines how the City may respond to a
18 large emergency should arguably change as
19 well.

20 Section 10-819 of The
21 Philadelphia Code, entitled "State of
22 Emergency," as originally enacted,
23 provides the Mayor the authority to
24 declare an emergency and provides for the
25 power to prohibit public gatherings,

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2 restrict the movement of people and
3 transportation into and out of the City,
4 prohibit the sale and/or service of
5 alcohol and gasoline, prohibit the sale
6 or carrying of firearms, and establish a
7 curfew.

8 It is my view that while
9 several sections of the existing Code are
10 still very much applicable and equally as
11 effective today as they were originally
12 enacted in 1967, there are numerous
13 sections which need to be enhanced and
14 expanded upon in order to meet the new
15 public safety challenges.

16 For example, while the current
17 Code provides for the power of the Mayor
18 to declare an emergency, it does so in an
19 incomplete way and conflicts with State
20 law. Title 35, Chapter 75, Subchapter A,
21 Section 7501.b of the State law states,
22 "A local disaster emergency may be
23 declared by the governing body of a
24 political subdivision upon finding a
25 disaster has occurred or is imminent.

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2 The governing body of the political
3 subdivision may authorize the Mayor or
4 other chief executive officer to declare
5 a local disaster emergency subject to
6 ratification by the governing body."

7 This conflicts with the current
8 Code, as does the term "local disaster
9 emergency" is used -- is not used rather
10 than "state of emergency." So one of the
11 changes is to bring this in line, this
12 language in line.

13 Additionally, the Code does not
14 explicitly state that the local governing
15 body must ratify the declaration, while
16 the State law stipulates this
17 ratification is necessary. And I'll be
18 offering an amendment today to deal with
19 that language change.

20 The current Code provides for
21 declaring an emergency when the City is
22 suffering or is in imminent danger of
23 suffering civil disturbance, disorder,
24 riot or other occurrence, but does not
25 provide for declaring a state of

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2 emergency during a major emergency.

3 Utilizing a more general term allows for

4 declaring an emergency for a wide range

5 of natural and human-caused disasters,

6 thus providing our government the ability

7 to act appropriately regardless of the

8 situation at hand.

9 The current Code does not

10 empower the Mayor to issue a

11 shelter-in-place or evacuation order for

12 all or any part of the City. This is an

13 essential element of any emergency

14 granted to the chief elected official, as

15 seen during every major hurricane since

16 Hurricane Andrew in 1992 and especially

17 highlighted during Hurricane Katrina in

18 2005.

19 While the current Code

20 addresses restricting the movement of

21 transportation such as vehicles, trains

22 and boats, it does so in a fragmented

23 way. Streamlining this language allows

24 any person to quickly assess the Mayor's

25 powers as it relates to restricting

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2 movement.

3 The current Code empowers the
4 Mayor to establish a curfew, but does not
5 adequately describe the parameters of the
6 curfew order, nor provide any exemptions
7 to the curfew such as for medical
8 professionals who may need to travel to
9 work.

10 The current Code restricts the
11 sale and service of alcoholic beverages,
12 but does not prevent it from being
13 transported or given away.

14 The current Code empowers the
15 Mayor to restrict the sale of gasoline or
16 other flammable materials, but does not
17 prevent it from being transported or
18 given away as well.

19 The current Code does not
20 restrict the sale, giving away or
21 carrying or possession of ammunition.

22 The current Code does not
23 address the closure of other types of
24 businesses.

25 The current Code does not

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2 define public space in a consistent
3 manner across subsections. So, for
4 example, in some sections it talks about
5 public parks, in other sections it talks
6 about streets, but it's very scattered
7 amongst the Code sections.

8 The current Code does not
9 empower the Mayor to prevent price
10 gouging.

11 The current Code does not
12 provide a catchall to provide for
13 additional unanticipated action by the
14 Mayor, such as to temporarily waive
15 routine administrative and budgetary
16 requirements that may impede the
17 effective delivery of essential public
18 services.

19 Additionally, I think there's a
20 typo in the Code. In letter (g), it says
21 "prohibit or restrict the sale of
22 gasoline or other inflammable liquids,"
23 and I think that that should be flammable
24 liquids. So we want to correct that as
25 well.

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2 It is with all of the above in
3 mind that the need to drastically alter
4 the current Code section dealing with an
5 emergency is clear.

6 The amendments that are
7 proposed are based on a review of the
8 current Code section, current State law,
9 which I referenced before, a review of
10 other cities' emergency powers code
11 sections, such as New York City; Kansas
12 City, Missouri; New Orleans and several
13 cities in Florida, and an analysis by the
14 Law Department.

15 The suggested amendments will
16 expand upon the measures that the Mayor
17 may take in an emergency, prohibit the
18 violation of orders issued in connection
19 with the declaration of an emergency,
20 revise the penalties for violations,
21 provide definitions, and make technical
22 and other changes, all under certain
23 terms and conditions.

24 Once again, thank you for the
25 opportunity to testify, and I

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2 respectfully request that Bill No. 080795
3 be reported out of Committee with a
4 favorable recommendation and that the
5 rules be suspended so as to allow for the
6 first reading of this bill at the next
7 session of Council.

8 I'd also like to offer an
9 amendment to the bill dealing with the
10 ratification of a declaration of
11 emergency by City Council. You should
12 have a copy of that amendment in front of
13 you.

14 I welcome any questions you
15 might have on this important topic at
16 this time.

17 COUNCILWOMAN MILLER: Thank
18 you.

19 Officer Healy.

20 LIEUTENANT HEALY: Yes. Good
21 morning again, Chairwoman Miller and
22 other members of the Committee of Public
23 Safety. As I mentioned, my name is
24 Lieutenant Francis Healy and I'm an
25 attorney and special advisor to

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2 Commissioner Ramsey, and I'm here to
3 testify on his behalf regarding this
4 bill. First, the Commissioner asks that
5 I extend his gratitude for allowing the
6 Department to voice its opinion on this
7 actually very important piece of
8 legislation.

9 As I think we can all agree, in
10 a post 9/11 world, it is clear that
11 government's overall response to an
12 emergency must both be efficient and
13 effective to save lives and protect
14 property. Across this country since 9/11
15 emphasis has been placed, and rightly so,
16 upon the first responders. This includes
17 police, fire and all other emergency type
18 and medical personnel. There has been a
19 tremendous amount of work done to ensure
20 the coordination and effectiveness of
21 these responders from the federal
22 government on down to the local level.
23 The current National Incident Management
24 System, or NIMS as it is better known, is
25 a classic example of federal, state and

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2 local first responders that are trained
3 in a unified approach to deal with any
4 emergency.

5 Along these lines, the Office
6 of Emergency Management under Deputy
7 Managing Director MaryAnn -- I'm sorry,
8 your new name?

9 MS. TIERNEY: Tierney.

10 LIEUTENANT HEALY: No, no, your
11 new last name.

12 MS. TIERNEY: That is my last
13 name.

14 I just got married last week.

15 LIEUTENANT HEALY: She's
16 recently married. MaryAnn has made great
17 strides. MaryAnn has made actually very
18 great strides in the City's overall
19 coordination of operational emergency
20 services, not just police and fire, but
21 actually attacking the overall picture,
22 and she's done a great deal of work on
23 that.

24 COUNCILWOMAN MILLER: Can you
25 pull the mike closer. Push the mike

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2 closer.

3 LIEUTENANT HEALY: However,
4 Philadelphia, like many other
5 jurisdictions across the country, has
6 neglected to legislatively update the
7 emergency powers of their mayors or chief
8 executive officers to reflect the new
9 threats facing our cities. In times of
10 crisis, there can be no doubt in the
11 powers and duties of government. Equally
12 important, the citizens must be aware of
13 their responsibilities. The issues must
14 be addressed and resolved long before an
15 emergency strikes. This is critical,
16 because the effectiveness of first
17 responders is predicated upon the very
18 power of government to take certain
19 actions during an emergency so there can
20 be no doubt or confusion.

21 The current Code was last
22 amended at a time when the biggest threat
23 to Philadelphia was riots and civil
24 disorder in the 1960s. As we all know,
25 times have changed and so have the

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2 threats that Philadelphia may face.

3 However, The Philadelphia Code has not

4 changed to reflect this fact. During a

5 true emergency, in its current form, The

6 Philadelphia Code could lead to confusion

7 and doubt in governmental powers. This

8 is unacceptable, because it contradicts

9 the essence of all the coordinating

10 efforts that have been done by the

11 operational emergency services.

12 So the goal of this amendment

13 is very simple. It removes any doubt in

14 the power of the Mayor to respond to any

15 emergency Philadelphia may encounter.

16 Specifically, it expands and clarifies

17 the power of the Mayor to address any

18 emergency that Philadelphia may face

19 today and, equally important, in the

20 future. This is currently lacking in the

21 City Code. However, these amendments

22 also clarify the duties and

23 responsibilities of the citizens during

24 emergencies and expressly prohibits

25 certain actions. It is clear, concise

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2 and places all citizens on notice of what
3 is expected during a true emergency.

4 The Code, in its current form,
5 lists what the powers of the Mayor are,
6 but they actually don't list any specific
7 prohibited activities. That's actually
8 very important for citizens to know what
9 they're expected to do.

10 So for these reasons, the
11 Philadelphia Police Department fully
12 supports these amendments, and this would
13 conclude my testimony on behalf of the
14 Police Commissioner.

15 Thank you.

16 COUNCILWOMAN MILLER: Thank
17 you.

18 Councilman Rizzo.

19 COUNCILMAN RIZZO: I have a
20 couple questions. It seems as though
21 "require the closing of all business
22 establishments in the City" is a very
23 broad statement. What about our electric
24 utilities? What about the refineries?
25 What about the other companies that we

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2 depend on? Don't you think we should be
3 more specific rather than just say all
4 businesses? Because all businesses are
5 all businesses. And let's say our
6 refinery here in Philadelphia, would that
7 apply there? We certainly wouldn't want
8 to shut a refinery down.

9 MS. TIERNEY: That's a very
10 good question. The idea of the Code is
11 to be broad in nature, and then actually
12 how the Code is implemented is, the Mayor
13 must issue an emergency order. And so in
14 that order, it would detail specifically
15 what would be closed, and utilities like
16 the refinery, like electrical systems are
17 critical infrastructure and I can't
18 imagine a situation where we would close
19 them. I don't even think it would be
20 physically possible to close them.

21 So I think what we're talking
22 about here are retail establishments.

23 COUNCILMAN RIZZ0: That's fair,
24 but I think there was some concern of
25 some of those agencies, because I was

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2 asked the question.

3 MS. TIERNEY: I think it's a
4 valid point. I think the importance here
5 is that we want to strategically position
6 the government to respond to any
7 emergency that may occur, and in doing
8 that, the goal was to provide
9 flexibility, and then the order itself
10 would provide the detail.

11 COUNCILMAN RIZZO: Okay. Also,
12 I have a question about suspend
13 operations at municipal airports. I
14 don't think a Mayor can -- from what I
15 understand, can the Mayor shut down
16 Philadelphia International Airport
17 without -- don't you think the feds have
18 something to say about that, the FAA, et
19 cetera?

20 MS. TIERNEY: To be honest with
21 you, that was in the -- that's in the
22 existing Code language. So the Code,
23 that section as it exists today includes
24 that provision.

25 I believe that there is

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2 coordination that occurs between the
3 Airport and the FAA on closures of the
4 Airport, and I imagine that would occur.

5 COUNCILMAN RIZZO: What about
6 sports stadiums? What about the Linc and
7 et cetera?

8 MS. TIERNEY: I think those
9 were the things that would have to be
10 detailed in the order, and so the Mayor
11 is afforded broad power to close and to
12 prohibit public gatherings as needed.
13 That power exists today in the Code. The
14 language is just clearer now and more
15 streamlined.

16 COUNCILMAN RIZZO: And my last
17 comment, is the word "taproom," is that
18 still a current word?

19 MS. TIERNEY: I'm sorry?

20 COUNCILMAN RIZZO: The word
21 "taproom."

22 MS. TIERNEY: Well, I thought
23 that was a kind of interesting one, too.

24 COUNCILWOMAN MILLER: She's
25 never even heard of it.

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2 COUNCILMAN RIZZO: You're too
3 young to even --

4 MS. TIERNEY: We call them
5 pubs.

6 COUNCILMAN RIZZO: That got my
7 attention. I remember that word. Maybe
8 that should be refreshed.

9 COUNCILWOMAN MILLER: We
10 probably need to do another amendment
11 later to this bill, go over each point,
12 each detail and get clarity. That's what
13 I would think. Update the language.
14 Okay.

15 COUNCILMAN RIZZO: Thank you.

16 COUNCILWOMAN MILLER:
17 Councilman Jones.

18 COUNCILMAN JONES: I'm going to
19 yield to Councilwoman Blackwell.

20 COUNCILWOMAN MILLER: Oh, I'm
21 sorry.

22 COUNCILWOMAN BLACKWELL: Not at
23 all. Thank you, Madam Chair.

24 I have many questions about
25 this bill, many, but I'll only mention

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2 two or three.

3 On Page 2 at the bottom, when
4 you talk about a curfew, you have
5 constitutional rights, the right to
6 assemble in a free country. This says a
7 curfew can prohibit assembly, gatherings,
8 loitering. You got constitutional rights
9 in here that are certainly larger than
10 our local law.

11 And I don't understand this
12 other -- I don't understand these issues
13 on Page 3 where we added or the
14 Administration added the distribution or
15 transport of -- they have gasoline or
16 they put in here free, the transport or
17 free provision of alcoholic beverages.
18 Why do they put in free stuff? So they
19 prohibit you from transporting or giving
20 away free alcoholic beverages. What's
21 the point of whether it's free or whether
22 it's not?

23 I don't understand all of these
24 issues and I don't understand how we
25 locally have the right to deal with these

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2 as opposed to state and federal law.

3 And certainly I would hope,

4 Madam Chair, that we can slow this down.

5 This is a very far-reaching -- it's

6 dangerous, frighteningly so, because it

7 deals with so many rights. Doesn't even

8 deal with Council being included in

9 emergency provisions. I mean, we are an

10 equal branch of government. In this

11 country we have executive, legislative

12 and judicial rights, and all of these

13 rights are coming into play in this bill.

14 This is a very dangerous bill,

15 and I would hope that we can slow down

16 and learn more about all of these points

17 and why they are here before this

18 Committee would move forward. Certainly

19 I respect the Committee's right -- I'm

20 not on this Committee -- to do whatever

21 you think you should do, but I would hope

22 that this Committee would not move

23 forward on this bill without a whole lot

24 of discussion that's not happening here

25 today.

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2 Thank you.

3 COUNCILWOMAN MILLER: Thank you
4 for your comments, and I did mean to
5 acknowledge your attendance here today.

6 This bill was actually enacted
7 in 1967.

8 COUNCILWOMAN BLACKWELL: All of
9 these changes were not.

10 COUNCILWOMAN MILLER: The one
11 change that -- no. These were
12 original -- excuse me. Councilwoman,
13 these were original items that were
14 included in the original bill in 1967.

15 One of the things that we
16 are -- the amendment that we're doing
17 today actually talks about -- and I don't
18 know that you have a copy of the
19 amendment.

20 COUNCILWOMAN BLACKWELL: I have
21 a copy of this. All the italicized --

22 COUNCILWOMAN MILLER: We have
23 an amendment that says the declaration --

24 MR. CHRISTMAS: Will last for
25 two weeks.

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2 COUNCILWOMAN MILLER: No.

3 Actually, I'll read every word of it.

4 "The Declaration: A declaration of local
5 disaster emergency, as that term is used
6 in State law, shall require the
7 ratification of City Council."

8 COUNCILWOMAN BLACKWELL: What
9 about all the italicized parts of this
10 bill? Are they not new in the pink copy?
11 All of that is old, too?

12 COUNCILWOMAN MILLER: Some of
13 them are new, I guess. We're trying to
14 update, yes.

15 COUNCILWOMAN BLACKWELL: All
16 that is old? It's a dangerous bill. All
17 of that is old, Madam Chair?

18 COUNCILWOMAN MILLER: We'll let
19 MaryAnn answer your question. She works
20 for the --

21 MS. TIERNEY: The curfew
22 provision exists today in the current
23 Code. A lot of the italicized language
24 was consolidating different sections of
25 the existing Code to make it clearer and

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2 also to -- basically, the Code was kind
3 of disorganized, and so part of this
4 effort was to reorganize the Code and
5 streamline the language so it was clearer
6 what the powers were.

7 The curfew provision exists
8 today, though. That is not a new
9 addition.

10 COUNCILWOMAN BLACKWELL: So
11 you're saying the italicized portions of
12 the pink copy are already law?

13 MS. TIERNEY: Yes. That
14 language exists in the Code today. It
15 may have been moved and the section
16 numbers changed and that's why it's
17 italicized.

18 COUNCILWOMAN BLACKWELL: Say
19 that again. It may have been moved
20 where?

21 MS. TIERNEY: Like, for
22 example, it might have been labeled
23 number one in the Code today and because
24 of all of the changes we're making, now
25 it's number three, and so that's a new

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2 number three and so now it's italicized.

3 COUNCILWOMAN BLACKWELL: So why
4 don't we have an updated, accurate copy
5 of what the Committee is asked to vote
6 on?

7 MS. TIERNEY: You have that.
8 That's the pink copy.

9 COUNCILWOMAN BLACKWELL: Well,
10 I don't understand what's italicized and
11 why -- then I don't understand.

12 COUNCILMAN GREENLEE: Can I
13 interrupt for one second.

14 I think what the Councilwoman
15 is asking, usually when we have a bill,
16 it says right on the back "italics
17 indicate new matter added." Now, are you
18 saying -- like, for example, she gave two
19 examples. And I'm sorry. I know you
20 changed your name, so I'm just going to
21 call you MaryAnn for a second.

22 MS. TIERNEY: That's all right.

23 COUNCILMAN GREENLEE: At the
24 bottom of Page 2 in the pink copy -- you
25 have the pink copy?

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2 MS. TIERNEY: I don't have the
3 pink copy in front of me.

4 COUNCILMAN GREENLEE: Could
5 somebody --

6 (Councilman Rizzo handed Ms.
7 Tierney the document.)

8 COUNCILMAN GREENLEE: Thank
9 you, Councilman.

10 So we can make it clear here
11 what's going on.

12 MS. TIERNEY: Sure.

13 COUNCILMAN GREENLEE: The
14 bottom of Page 2, the Councilwoman raised
15 some concerns about some of that. You
16 see a lot of that is italicized. Now, it
17 seemed like in your answer you were
18 saying some of that was shifted somewhere
19 else. Is that totally new wording?

20 Maybe, Lieutenant, do you know?

21 Or is that something that was
22 changed from another section; do you
23 know?

24 MS. TIERNEY: Okay. So you see
25 where it says -- I'll read it to you.

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2 "Establish a curfew." That exists today.
3 That's not an italicized. "Throughout
4 the City or in any part thereof." Now,
5 previously -- that's what's italicized,
6 that's the addition. Now, previously the
7 Code said something like that, but it was
8 very confusing, and so I just made it
9 clearer. And then there, it says
10 "persons may go or travel on public
11 streets" -- that part is existing
12 today -- comma, "or travel through or
13 occupy parks, parking areas, public
14 accommodations or other locations
15 commonly open to public use." Now, this
16 is when I was talking before about how it
17 said the same thing, the Code says the
18 same thing in different ways, this type
19 of restriction about movement of people
20 on streets or in parks, it was said
21 throughout the whole Code section, but it
22 was said in different ways. So I said it
23 the same way in every Code section. I
24 took the way it was written, I made it a
25 little clearer, and then I repeated that

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2 throughout the Code section.

3 COUNCILMAN GREENLEE: So is

4 it --

5 COUNCILWOMAN BLACKWELL:

6 Councilman, as you see, we have the Code.

7 COUNCILMAN GREENLEE: Right.

8 COUNCILWOMAN BLACKWELL: We're
9 checking the Code by the italicized
10 language. It's not the same.

11 COUNCILMAN GREENLEE: I think
12 what was testified -- and, again, I want
13 to make this clear so everybody
14 understands -- was that there was wording
15 similar to that.

16 MS. TIERNEY: Yes.

17 COUNCILMAN GREENLEE: But that
18 you changed the wording, in your opinion,
19 to make it clearer?

20 MS. TIERNEY: Yes. That's
21 correct.

22 COUNCILMAN GREENLEE: Is that
23 your testimony?

24 MS. TIERNEY: Yes. There is
25 wording that is similar.

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2 COUNCILMAN GREENLEE: Now, I
3 don't know what else is in there. I
4 think usually, though -- again, I'm not
5 trying to be too technical here, but if
6 something was taken out, shouldn't it
7 have been put in the brackets to show
8 what was taken out? You know what I'm
9 saying?

10 MS. TIERNEY: Yes, I understand
11 what you're saying. The Law Department
12 prepared the legislation itself, and this
13 is an addition.

14 COUNCILMAN GREENLEE: Well,
15 it's an addition, but then see -- again,
16 I'm not trying to be technical here, but
17 just so we're all covering -- forgetting
18 our philosophy on this, just legally if
19 we're doing it right. If you're taking
20 something out, like that wording you said
21 that was confusing, shouldn't there be
22 some place in here where it's bracketed
23 out?

24 MS. TIERNEY: But I think in --

25 COUNCILMAN GREENLEE: Is it? I

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2 mean, I don't know. You know what I'm
3 saying? I think there should be -- if
4 you're taking something out to make it
5 clearer, I would think you would bracket
6 it out, like you did in that little piece
7 where you said inflammable versus
8 flammable. You bracketed out
9 "inflammable."

10 MS. TIERNEY: But for the
11 curfew section, the problem was that it
12 wasn't -- this is additional language.
13 So while it said establish a curfew,
14 that's pretty much all it said, and so we
15 had -- well, what does it mean to
16 establish a curfew? Where can the curfew
17 be established? What areas can the
18 curfew be in effect? And so this is to
19 provide clarity around what it means to
20 establish a curfew.

21 COUNCILMAN GREENLEE: Was there
22 something taken out, though? Because I
23 thought you said earlier you put these
24 other words in to make it clearer, that
25 the other stuff was confusing.

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2 MS. TIERNEY: I believe --

3 COUNCILMAN GREENLEE: I don't
4 want to say your wrong words.

5 MS. TIERNEY: I understand what
6 you're saying. I think in the curfew
7 section -- I don't have the original Code
8 in front of me. Maybe I do.

9 The curfew section didn't have
10 any language, I believe, in it like this,
11 and that's why this is in addition.

12 COUNCILMAN GREENLEE: So you're
13 not taking anything out?

14 MS. TIERNEY: Of the curfew
15 section, no. We're adding in. But the
16 fact that the Mayor could establish a
17 curfew exists in the Code today. The
18 problem --

19 COUNCILMAN GREENLEE: I
20 understand that, and that's in there and
21 that says that.

22 MS. TIERNEY: The problem with
23 that section is that it did not provide
24 detail and guidance on what it means for
25 the Mayor to establish a curfew.

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2 COUNCILMAN GREENLEE: Okay. I
3 understand that. So just to be clear,
4 you're not taking anything out, these
5 words that are in italics are additions
6 to, in your opinion, make it clearer; is
7 that right?

8 MS. TIERNEY: Yes. That's
9 correct. Yes.

10 LIEUTENANT HEALY: Councilman,
11 if I could address --

12 COUNCILMAN GREENLEE: Yes.

13 LIEUTENANT HEALY: The core
14 concern that I heard from you is
15 constitutional issues. They were very
16 important to me as well from the Police
17 Department's perspective and as an
18 attorney. When I looked at this, that
19 was the first thing that smacked me in
20 the face, quite frankly, as well, that
21 where is the balance of powers. And when
22 I read this originally, what was
23 lacking -- what I saw lacking was the
24 ratification issue, and I brought that up
25 to the Law Department, and they realized

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2 that it needed to be tweaked, and that's
3 what the minor little amendment today is,
4 a checks and balance that gives this body
5 the authority to actually either revoke
6 the Mayor's earlier proclamation or to
7 continue it, because it is such an
8 important power and a very big power.

9 The ability to restrict one's
10 rights can be done by government if it's
11 done so in a compelling basis. Now, the
12 compelling basis here is the state of
13 emergency. I mean, we're not looking to
14 limit anyone's right to protest or
15 anything like that in any way whatsoever.

16 COUNCILWOMAN BLACKWELL: Thank
17 you.

18 Madam Chairman, for example, I
19 have before me The Philadelphia Code. On
20 Page 561, Section (e) -- and you have on
21 the bill Section (e). Section (e) in the
22 Code states, quote, "Establish a curfew
23 limiting the hours when persons may go
24 upon or travel the public streets;" end
25 of quote. That's all. Do you see this

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2 whole long paragraph? I mean, you have

3 lawyers who argue about interpretation.

4 I mean, and that is a whole lot different

5 than having one sentence and having this

6 long paragraph. We could disagree even

7 on interpretation even if we agree with

8 what's been said.

9 But I would recommend that the

10 Committee look at this. You can't pass

11 stuff out that's not in order, and

12 obviously this is not in order.

13 Thank you.

14 COUNCILWOMAN MILLER: Thank

15 you. Thank you, Councilwoman.

16 We also have -- I just want to

17 make an announcement. We have one other

18 witness. I'll call on Councilman Jones,

19 and will the witness Ed Hazzouri from Sun

20 Oil come up to the table also.

21 Councilman Jones.

22 COUNCILMAN JONES: Thank you,

23 Madam Chair. I know next time to yield

24 to my colleague, Councilwoman Blackwell.

25 She added a lot of good points to this

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2 and helped me to codify my thoughts on
3 this, and so thank you.

4 I have a couple of -- let's put
5 a pin in whether or not this is
6 structurally correct as an ordinance and
7 whether or not we follow the proper
8 procedure with brackets, but I just want
9 to take a step back and go over to the
10 overall context of why we are looking at
11 these provisions.

12 In light of the events since
13 9/11, if I were a Councilman before 9/11
14 and you asked to change this, I would be
15 very skeptical. I would be hard-pressed
16 to even consider how close this could be
17 to stomping on constitutional rights. I
18 probably wouldn't. In a post 9/11
19 environment and post India event that we
20 recently undertook, I am at least open to
21 looking at and evaluating existing laws
22 on the books to make sure that we in
23 Philadelphia prepare in advance and be
24 proactive to these kinds of realities
25 today.

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2 I have a couple of questions
3 that do not need to be answered now
4 because of time, but need to be answered
5 either in a briefing or in a continuation
6 of this hearing. And if they can be
7 answered now, fine.

8 MS. TIERNEY: Sure.

9 COUNCILMAN JONES: One, when is
10 the last time this municipality, this
11 City, this Mayor or any Mayor took into
12 their own accord invoking these rights?
13 When was the last time we used these
14 powers as a city?

15 LIEUTENANT HEALY: Never that
16 I'm aware of.

17 MS. TIERNEY: I think it's been
18 a significant amount of time. Not in
19 recent memory has the Mayor declared a
20 state of emergency.

21 COUNCILMAN JONES: I think the
22 last time we may have used these -- and
23 I'm not sure -- may have been the riots
24 on Cecil B. Moore Avenue, and those were
25 the circumstances in which a Mayor chose

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2 to invoke these powers. So that's number
3 one. And I want you to research the
4 circumstances around that, because at
5 that point in time in the consciousness
6 of this City, it was a civil rights issue
7 involved, and that's why some members of
8 Council may be a little more sensitive to
9 these rights and how far we go.

10 The second thing is, what do
11 other cities do, comparable cities, New
12 York and Chicago, big cities like this?
13 What is the current state of mind,
14 current state of resolutions or
15 ordinances that they have passed, and
16 give us a sense of what other cities are
17 doing. So I'd like to do that.

18 MS. TIERNEY: That I can answer
19 for you now.

20 In developing this change,
21 these amendments, I reviewed the codes
22 for over 25 large cities, including New
23 York City; Boston; several cities in
24 Florida; several cities in California;
25 New Orleans; Kansas City, Missouri. I

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2 looked at a lot of code sections to
3 develop this language. We are doing now
4 nothing no different than what those
5 other cities are doing today. And, in
6 fact, our Code I think, if it's passed as
7 is, our Code will position us better than
8 those other cities, because I was able to
9 take the best language from all of those
10 codes and move that language into our
11 Code.

12 COUNCILMAN JONES: Just so you
13 know, "best" is relative. Best for who
14 and best for what? So "best" is a
15 eristic concept and I would be careful
16 with "best." I'd like to do the
17 comparisons in an objective evaluation
18 that this body may do. So "best" kind of
19 depends on where you stand on the issues.

20 MS. TIERNEY: Okay. Well, to
21 be especially clear, the sections that we
22 talked about today, curfew, price
23 gouging, restricting movement, all of
24 those Code sections, whether or not you
25 want to say the language is the best,

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2 exists in all of the other cities that I

3 reviewed, including the ten -- I looked

4 at 25 code sections from 25 cities.

5 Cities like New York, Boston, Chicago

6 have language that is similar and address

7 the same issues as this.

8 Now, I can understand, "best"

9 is a relative term. I think what I tried

10 to do was to provide clarity around

11 language that was really unclear and

12 inconsistently spoken throughout the

13 Code. It's not good to say the same

14 thing three different ways in

15 legislation. You guys know this. And so

16 I tried to make it very clear to people

17 what is and is not allowed and what the

18 Mayor can and cannot do.

19 COUNCILMAN JONES: Okay. I'm

20 going to move quickly here. We need to

21 evaluate which parts, if we give the law

22 life, what parts of this by way of

23 discretion -- is there a way to say under

24 this level of circumstances, we will

25 impose the following measures, and then

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2 in a heightened state of emergency -- I
3 don't know how they do it on the federal
4 level, from orange to yellow -- that
5 these things could be graduated as
6 opposed to a blank slate, you know, to be
7 able to impose all of them at once? So
8 that's the other question.

9 And then -- hold it. And then
10 in total context of what we do in the
11 case of an emergency, I know you have
12 drills, I know you have a command
13 structure, I know you have protocols and
14 procedures, but as a new Councilperson, I
15 don't know them. So I don't know how in
16 a case of an emergency in the Fourth
17 District where we would report, what we
18 would do, how would we react. When asked
19 how we would govern, I don't know.

20 So in total context of what the
21 Mayor's powers are, it would be
22 interesting and informative both to me
23 and the people I represent to be able to
24 instruct them on what to do, other than
25 stay in the house and shut your doors.

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2 MS. TIERNEY: Okay. I'll take
3 your first question first. I'm sorry.
4 Can you repeat your first question?

5 COUNCILMAN JONES: I'm sorry.

6 MS. TIERNEY: It's okay.

7 COUNCILMAN JONES: Can we
8 graduate --

9 MS. TIERNEY: Yes. Okay. I
10 would advise against creating specific
11 tiers inside the Code. Remember, this is
12 a set of tools. If you think about this
13 as like Batman, Batman has tools on his
14 tool belt and he doesn't use every tool
15 in every emergency. He takes the tools
16 he needs off of his belt and he uses them
17 as they're needed.

18 This Code -- all of our tools
19 in emergency response are like that. The
20 Mayor in his emergency declaration may
21 use some or all of these sections. I
22 imagine that for most emergencies, you
23 would only see some of the sections used.

24 The idea is to give the Mayor
25 and the chief elected official the

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2 ability to have these options available
3 regardless of the emergency so that based
4 on the event, which you would never
5 really be able to pre-define every single
6 thing that may or may not happen inside
7 the Code -- that would be a very messy
8 thing to try to disentangle in an
9 emergency -- you're giving the Mayor a
10 set of tools that can then be used in the
11 emergency based on the circumstances.

12 As far as briefing the Fourth
13 District, I would be happy to come out
14 personally and talk to any number of your
15 constituents about what they should do in
16 an evacuation, in a shelter-in-place, the
17 kinds of materials they should have on
18 hand. Any time you want to do that, I'm
19 happy to come.

20 COUNCILMAN JONES: I appreciate
21 that offer, and I will take you up on it,
22 but I think what I was -- I know what I
23 was trying to convey to you was, we need
24 to be briefed as a body as to what to do
25 when we hear on CNN --

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2 MS. TIERNEY: I would be happy
3 to brief the Council. I have wanted to
4 do that for some time, and I would be
5 happy to come and -- actually, there's a
6 course. It's a very short course. I
7 know you're all very busy. It's a very
8 short course that kind of walks you
9 through -- it's a 25 cent tour of
10 emergency response.

11 COUNCILMAN JONES: I would be
12 interested --

13 MS. TIERNEY: I would be happy
14 to do that. It's about two hours, and if
15 you wanted to work with me to get that
16 arranged, I would love to do that.

17 COUNCILMAN JONES: Then finally
18 for the record, the last time we imposed
19 a curfew as a municipality was in 1968 at
20 the occasion of the shooting death of
21 Dr. Martin Luther King, and I think
22 that's important to note and underscore.

23 MS. TIERNEY: And if I could
24 add on to that, I think it's also very
25 important to remember the context -- and

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2 I think that you're highlighting it --
3 that this is not something that is used
4 every day. This is a set of tools that
5 you hope never have to be used, but when
6 they have to be used, you want them to be
7 there and you want them to be
8 operationally correct and clear so that
9 there is no confusion, because the last
10 thing you need in an emergency is more
11 confusion.

12 I think that that's a really
13 good point. We're not going to use this
14 next week, hopefully. This is not
15 something that we're going to turn around
16 and say, Okay, let's declare an
17 emergency. This is something it will
18 take a significant event to invoke, and I
19 think that that's a very important point.

20 COUNCILMAN JONES: Thank you,
21 Madam Chairman.

22 COUNCILWOMAN MILLER: Thank
23 you.

24 Councilwoman Blackwell.

25 COUNCILWOMAN BLACKWELL: Thank

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2 you.

3 Councilman Jones mentioned one
4 of the things that -- I keep seeing my
5 Rosa Parks photo in my office that talks
6 about these rights of assembling,
7 gathering. It's a major part of civil
8 rights history and the history of this
9 country, and to just say it can be
10 explained or it can be briefed away
11 undermines all that this country is and
12 all the progress we've made to get this
13 far. It is absolutely frightening for
14 anybody to say that a person can just --
15 and two weeks later, we have a right to
16 kick in that assembling, gathering,
17 congregating can just abridge those
18 rights upon which our country and all
19 civil rights legislation is founded is
20 very, very frightening. And for us to
21 sit here and not realize the impact and
22 the importance of what is being said is
23 just amazing.

24 This can't be -- there's no way
25 you can just tell me that that's okay.

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2 You can't tell me about civil rights
3 laws, civil rights legislation that we
4 fought for, that King, that Rosa Parks,
5 we went through all this, in the bus
6 boycotts. We went through this. Rights
7 to assemble? Rights to gather? All of
8 this can be taken away? Oh, I don't
9 think so.

10 COUNCILWOMAN MILLER: Well, I
11 think --

12 COUNCILWOMAN BLACKWELL: Thank
13 you, Madam Chair.

14 COUNCILWOMAN MILLER: You're
15 welcome.

16 Your point is well taken.

17 I want to hear from officer --
18 I'm sorry; from a representative from Sun
19 Oil, Ed Hazzouri. Please come up to the
20 witness table.

21 (Witness approached witness
22 table.)

23 MR. HAZZOURI: Good morning.
24 I'm Ed Hazzouri, H-A-Z-Z-O-U-R-I, from
25 Sunoco, and I'll limit myself to really

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2 the business closing and transportation
3 issues, although -- and not the very
4 serious civil and constitutional rights
5 issues that are being discussed.

6 On the closing of a business,
7 the one point that we just wanted folks
8 to think about was just to be sure that
9 when you give the authority to close
10 businesses and especially non-retail
11 businesses, but manufacturing businesses,
12 the fact that you could have an impact
13 well beyond Philadelphia and the Delaware
14 Valley. For example, if you close one of
15 the refineries in South Philadelphia,
16 within a very short period of time you
17 could end up having shortages of jet fuel
18 outside of the Philadelphia Airport, in
19 New York, in New England, home heating
20 oil, diesel fuel, and, in fact, we had an
21 experience with this right after 9/11.
22 In fact, on 9/12, that Wednesday, the
23 United States Coast Guard had contacted
24 us to say that they were considering
25 closing down the Delaware River to

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2 commerce, and we had asked them to hold
3 off, and then we sat down with the Coast
4 Guard and the other refiners on the river
5 to explain the impact that -- folks don't
6 always realize how important the Delaware
7 and Schuylkill Rivers are to the
8 northeast United States, that with just a
9 week's shutdown, that you could end up
10 having impacts at JFK Airport, at
11 Laguardia Airport, all up and down the
12 East Coast. And granted, at that time,
13 you had lost pipeline connection to the
14 Gulf Coast of the United States, but just
15 so that folks -- that this sort of thing
16 needs to be considered when making these
17 sorts of decisions on closing businesses.

18 The second piece dealing with
19 transport of fuel or flammable or
20 inflammable liquids -- or, actually, I'll
21 be even more general, any hydrocarbons,
22 because not all hydrocarbons are
23 necessarily flammable. They're not just
24 transported in traditional ways. You've
25 got barges, you've got pipelines taking

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2 materials all over the country, and we
3 just need to be sure are these sorts of
4 things -- are we talking about shutting
5 those down so that then there's an impact
6 well beyond the border of Philadelphia
7 and the Delaware Valley.

8 COUNCILWOMAN MILLER: Thank
9 you.

10 Are there any questions?

11 Councilman Greenlee.

12 COUNCILMAN GREENLEE: Just a
13 quick question. Thank you, Madam Chair.

14 Just to the witness, you did
15 hear the testimony, though, that the idea
16 of this is to put out the broad ideas.
17 It doesn't mean that if the state of
18 emergency is set, that all those things
19 would happen.

20 MR. HAZZOURI: Absolutely.

21 COUNCILMAN GREENLEE: Okay.

22 MR. HAZZOURI: That's why I was
23 saying -- that's why I said just some
24 notion that these things need to be
25 considered, as you talked about, as you

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2 pick from the menu, just that it's not in
3 a vacuum, because --

4 COUNCILMAN GREENLEE: We hope
5 we never have to pick from anything.

6 MR. HAZZOURI: Yes. Yes.

7 COUNCILMAN GREENLEE: And it
8 is, as the Chair said, this would be
9 subject to ratification by Council as per
10 amendment we're going to put in. So it
11 wouldn't just be one person making that
12 decision.

13 MR. HAZZOURI: Yes.

14 COUNCILMAN GREENLEE: All
15 right. Thank you.

16 Thank you, Madam Chair.

17 COUNCILWOMAN MILLER: Thank
18 you.

19 I want to thank you for your
20 testimony.

21 Again, these are -- a state of
22 emergency is a situation we hope would
23 never happen, and when the bill was
24 created back in '67, it was created
25 because it took a look at civil disorder,

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2 not the 9/11 World Trade or disasters
3 like Katrina. But I do believe that
4 there's lots of questions about this bill
5 and about the particulars of the bill and
6 we really need to have a meeting, and
7 we're going to try to arrange to have a
8 meeting next week, and it is my
9 recommendation that this Committee will
10 be recessed to the call of the Chair, and
11 once those questions are answered and
12 Councilmembers understand this bill
13 better, then we will reconvene a hearing
14 and vote this bill out of Committee.

15 You have a question, MaryAnn?

16 MS. TIERNEY: No, I don't have
17 any question. I'd be happy to set up a
18 briefing.

19 COUNCILWOMAN MILLER: Okay.

20 And the other thing before we recess is
21 that I've been trying to get some type of
22 information just even about the
23 evacuation of City Hall in the case of an
24 emergency, and we have not been -- we
25 have never had that, and I've been here

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2 13 years. Curtis is saying he's new.

3 I've been here 13 years. I don't know

4 how long Bill has been here.

5 COUNCILMAN GREENLEE: Too long.

6 COUNCILWOMAN MILLER: Too long

7 in the building. And there's never been

8 enough information about an emergency, no

9 more than the "stay in place" that comes
10 on the City channel from Comcast.

11 So we do need to have that type
12 of education. And I think that there
13 will be a number of people interested in
14 the course that you talked about.

15 MS. TIERNEY: I think that
16 would be really good for Council. I'd be
17 happy to do that.

18 COUNCILWOMAN MILLER: Thank
19 you.

20 All right. This Committee is
21 now in recess. Thank you.

22 (Committee on Public Safety
23 recessed at 10:10 a.m.)

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CERTIFICATE

I HEREBY CERTIFY that the
proceedings, evidence and objections are
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