

COUNCIL OF THE CITY OF PHILADELPHIA
COMMITTEE ON LICENSES AND INSPECTIONS

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Room 400, City Hall
Philadelphia, Pennsylvania
Thursday, October 23, 2008
1:10 p.m.

- - -

PRESENT:

COUNCILWOMAN MARIA QUINONES-SANCHEZ, CHAIR
COUNCILMAN DARRELL L. CLARKE
COUNCILMAN BILL GREEN
COUNCILMAN WILLIAM GREENLEE
COUNCILMAN JAMES F. KENNEY.
COUNCILWOMAN BLONDELL REYNOLDS BROWN
COUNCILWOMAN JOAN KRAJEWSKI
COUNCILMAN JACK KELLY

Bill 080433 - An ordinance amending Chapter
9-600 of The Philadelphia Code, entitled
Service and Other Business," by amending
Section 9-610, entitled "Massage
Businesses"...

BILL 080546 - An ordinance amending Subcode
"PM" (The Philadelphia Property Maintenance
Code) of Title 4 of The Philadelphia Code,
entitled "The Philadelphia Building
Construction and Occupancy Code"...

BILL 080622 - An ordinance amending Title 9 of
The Philadelphia Code, entitled "Regulation of
Businesses, Trades and Professions"...

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1
2 COUNCILWOMAN SANCHEZ: Good
3 afternoon. We're going to get started.
4 I'd like to open up the hearing part of
5 the Committee on Licenses and
6 Inspections.

7 Before the Clerk reads the
8 bill, I wanted to acknowledge we have
9 before me Councilman Greenlee,
10 Councilwoman Blondell Reynolds Brown,
11 Councilman Green, Councilman Clarke, who
12 has a bill in committee, and Councilman
13 Kenney, who would like to address the
14 group before we begin.

15 COUNCILMAN KENNEY: Thank you
16 very much, Madam Chair. I appreciate the
17 opportunity to speak on the bill that
18 I've introduced, which is an effort to
19 codify regulations that were put in place
20 by the City's Department of Licenses and
21 Inspections subsequent to a number of
22 different tragedies in New York and in
23 Miami when it comes to the erection of
24 tower cranes and trying to make sure that
25 the workers are safe and the citizenry

1 10/23/08 - L&I - BILL 080433, etc.
2 safe. We've worked very hard to come to
3 some agreement with this, which we have
4 today, and I just want to publicly thank
5 a few people who worked on the bill in
6 its negotiation. The Ironworkers are
7 here, with Joe Dougherty; Operating
8 Engineers, Tony Lucey and Lou Ager;
9 Carpenters District Council was very much
10 involved; the General Building
11 Contractors Association; George Young is
12 here from the George Young Company;
13 AmQuip. And I'd like to specially thank
14 Otis Haigler from L&I and Sarah Sachdev
15 on my staff, who really diligently worked
16 through this process to come up with a
17 piece of legislation we all can live with
18 and accomplish the goals of both worker
19 and citizen safety. So thank you.

20 COUNCILWOMAN SANCHEZ: Thank
21 you.

22 I just want to make a point
23 that there will be an amendment during
24 the public meeting part of our discussion
25 this afternoon.

1 10/23/08 - L&I - BILL 080433, etc.

2 If the Clerk would read the
3 Bill 080622.

4 THE CLERK: 080622, an
5 ordinance amending Title 9 of The
6 Philadelphia Code, entitled "Regulation
7 of Businesses, Trades and Professions,"
8 by adding a new Chapter regulating the
9 erection, use and inspection of tower
10 cranes, all under certain terms and
11 conditions.

12 COUNCILWOMAN SANCHEZ: Mr. Otis
13 Haigler and Mr. George Young.

14 (Witnesses approached witness
15 table.)

16 COUNCILWOMAN SANCHEZ: Thank
17 you. You can get started.

18 MR. HAIGLER: Thank you. Good
19 afternoon, Councilwoman Sanchez and
20 members of the Committee. I am Otis
21 Haigler, Jr., Director of Legislative
22 Affairs for the Department of Licenses
23 and Inspections. Today I am here to
24 provide testimony on Bill 080622, which,
25 if enacted, will add a new Section 9-3200

1 10/23/08 - L&I - BILL 080433, etc.
2 to The Philadelphia Code in order to
3 regulate the installation and use of
4 tower cranes on construction sites in the
5 City of Philadelphia.

6 As we have been made aware due
7 to recent tragedies that have occurred in
8 New York, Miami and Las Vegas resulting
9 in death, injuries and significant
10 property damage, the installation and use
11 of tower cranes on construction sites
12 requires more than just the equipment
13 being in good operating condition. It
14 also requires specialized knowledge and
15 training of those involved in all aspects
16 of the crane operation in order to ensure
17 the safety of all workers on the job
18 site, as well as the public at large.

19 Highlights of this bill include
20 requirements for all persons involved in
21 any aspects related to the tower crane's
22 operation to be certified by the National
23 Commission for the Certification of Crane
24 Operators or possess equivalent
25 third-party certification from another

1 10/23/08 - L&I - BILL 080433, etc.
2 nationally recognized organization such
3 as the American National Standards
4 Institute or the National Commission of
5 Certifying Agencies. The purpose of the
6 certification is to ensure that all
7 persons who perform work involving this
8 highly complex piece of construction
9 equipment have the necessary knowledge
10 and training to perform such work
11 competently and safely.

12 In addition, the bill provides
13 for disclosure of information that might
14 affect the safe operation of the tower
15 crane by the owner, renter or lessee of
16 the tower crane to the construction
17 manager or owner/developer of the project
18 prior to the crane's erection on the job
19 site.

20 Other requirements of the bill
21 include provisions for the submission of
22 documents to the Department, that have
23 been reviewed and sealed by a
24 professional engineer and licensed in the
25 Commonwealth of Pennsylvania, which

1 10/23/08 - L&I - BILL 080433, etc.
2 attests to the structural integrity of
3 the tower crane prior to its erection and
4 also during periods when it's either
5 raised or lowered; requirements for the
6 convening of a site safety meeting by a
7 qualified, trained supervisor of the
8 tower crane operation and a designated
9 safety representative with all parties
10 involved in the operation of the crane
11 prior to the beginning of any new phase
12 where the adjustments are made to the
13 crane in order to ensure that all persons
14 have responsibility involving such
15 adjustments have the required credentials
16 and training with regard to the specific
17 crane, as well as that all persons
18 involved in the operation understand
19 their role with regard to the task to be
20 performed and the hazards associated with
21 the task; and, finally, requirements for
22 the submission of a Certificate of
23 Insurance by the tower crane owner or
24 lessee prior to its erection on the job
25 site which stipulates that the work

1 10/23/08 - L&I - BILL 080433, etc.
2 involved with the crane is insured for
3 General Comprehensive Liability at a
4 minimum of \$15 million and that the City
5 has been named as additionally insured
6 and certificate holder for the purposes
7 of indemnifying the City against
8 liability for work that is performed
9 involved with the tower crane at the
10 construction site.

11 Thank you for the opportunity
12 to provide the Department's testimony on
13 this bill. I will be happy to answer any
14 questions at this time.

15 COUNCILWOMAN SANCHEZ: Thank
16 you.

17 I want to recognize that my
18 colleagues Councilman Kelly and
19 Councilwoman Krajewski have also joined
20 us.

21 Why don't we hear from
22 Mr. Young and then we'll take questions.
23 Thank you.

24 MR. YOUNG: Thank you,
25 Councilwoman Sanchez.

1 10/23/08 - L&I - BILL 080433, etc.

2 Members of City Council, thank
3 you for allowing me the opportunity to
4 testify in support of Bill 080622. My
5 name is George Young. I am President of
6 George Young Company, Philadelphia's
7 second oldest family business. I'm a
8 former Chairman of the Board of the
9 Specialized Carriers and Rigging
10 Association, the world's largest crane
11 and rigging trade association, and a
12 long-time member of the General Building
13 Contractors Association of Philadelphia.

14 Our firm's craftpersons spend
15 approximately quarter of a million craft
16 hours per year planning, hoisting and
17 moving unusually sized objects. For
18 almost 140 years, our firm has been
19 honored to move or hoist items as varied
20 as the City's 2,080 pound Liberty Bell to
21 Aker Ship's seven and a half million
22 pound Goliath crane and everything in
23 between.

24 I'm a firm believer in training
25 and certification. Our firm's crane

1 10/23/08 - L&I - BILL 080433, etc.
2 operators and craftpersons have been
3 certified to perform hoisting for almost
4 a decade. We also, interestingly enough,
5 send our Philadelphia-based craftpersons
6 routinely to perform hoisting in the
7 Caribbean, where these types of skill
8 certifications are not available for
9 Caribbean-based contractors. I've seen
10 people when they're certified and when
11 they're not, and the difference in skill
12 levels and safety is quite noticeable.
13 Certification works.

14 Even though Philadelphia has
15 fortunately not been plagued with the
16 tower crane accidents that New York or
17 Miami have experienced, Philadelphia's
18 officials became proactive and invited
19 tower crane owners and users, labor, the
20 General Building Contractors Association,
21 the National Commission for the
22 Certification of Crane Operators and
23 insurance representatives to work
24 collaboratively on the comprehensive
25 tower crane hoisting regulation before

1 10/23/08 - L&I - BILL 080433, etc.
2 you.

3 We've all seen on television or
4 in periodicals the devastating results
5 and negative publicity that hoisting
6 accidents can bring. Safe hoisting is a
7 result of three items working well as a
8 system, similar to a three-legged stool.
9 If one leg fails, the stool may tip over.
10 Bill 080622 recognizes that cranes and
11 their operators, riggers and signal
12 persons must all meet minimum criteria of
13 inspection or training. The criteria
14 must be verified by third-party
15 inspectors or knowledge must be assessed
16 through practical testing and written
17 examination performed by accredited
18 organizations such as the National
19 Commission for the Certification of Crane
20 Operators.

21 Engineering News Record, the
22 nation's preeminent construction
23 magazine, recently profiled Philadelphia
24 as an incubator for progressive crane
25 rules and suggested that these

1 10/23/08 - L&I - BILL 080433, etc.
2 requirements could be a new model for
3 crane safety. This new model requires
4 worker training with craftpersons' skill
5 sets verified through independent
6 third-party testing. Risk management is
7 enhanced by requiring documented
8 pre-planning when tower cranes are
9 erected, jumped or dismantled, as well as
10 a requirement for increased insurance
11 protection for the City of Philadelphia.

12 Lastly, this bill requires
13 documented crane maintenance, including
14 periodic crane inspections performed by
15 certified independent crane inspectors,
16 along with enhanced disclosure
17 requirements of the tower crane's age and
18 condition.

19 Our industry commends you and
20 the City of Philadelphia officials for
21 their foresight in protecting our
22 craftpersons and the public, and firmly
23 supports your passage of this
24 legislation.

25 Again, thanks to Councilman

1 10/23/08 - L&I - BILL 080433, etc.
2 Kenney, the Department of Licenses and
3 Inspections and all members of our ad hoc
4 committee for participating in keeping
5 hoisting in Philadelphia the safest
6 available.

7 COUNCILWOMAN SANCHEZ: Thank
8 you.

9 Are there any questions?
10 Councilman Greenlee and then
11 Councilman Green.

12 COUNCILMAN GREENLEE: Thank
13 you, Madam Chair.

14 First of all, thanks to all of
15 you for this bill and for Councilman
16 Kenney, because anything that improves
17 the safety for everybody concerned, the
18 workers and anybody walking by, is to be
19 commended. Unfortunately it had to be
20 these circumstances that brought this
21 about in other cities.

22 But I have a question that's
23 totally different. You piqued my
24 interest, Mr. Young. You're the second
25 family business. What's the first?

1 10/23/08 - L&I - BILL 080433, etc.

2 MR. YOUNG: It's an art gallery
3 in Center City. I don't recall their
4 name, but I think they might be four
5 years older than we are. We were started
6 in 1869 here in Philadelphia.

7 COUNCILMAN GREENLEE: Really?
8 Wow. Great. Thank you.

9 Thank you, Madam Chair.

10 COUNCILWOMAN SANCHEZ:
11 Councilman Green.

12 COUNCILMAN GREEN: Thank you,
13 Madam Chair.

14 I, too, want to commend
15 Councilman Kenney for being proactive
16 rather than reactive and making sure that
17 our laws and protections for people are
18 up to date.

19 I would like to just --
20 Mr. Haigler, for the record, are all of
21 the stakeholders who are part of this
22 working group in favor of this
23 legislation, the Ironworkers, the
24 Operating Engineers, et cetera? Were
25 there any dissenters?

1 10/23/08 - L&I - BILL 080433, etc.

2 MR. HAIGLER: Yes, all are in
3 favor.

4 COUNCILMAN GREEN: Thank you.

5 Mr. Young, your family has been
6 in Philadelphia a long time. You're a
7 great Philadelphia business, and I
8 understand that you recently tried to
9 relocate to the Navy Yard and other
10 places and were unable to get
11 accommodation here in the City of
12 Philadelphia, and I understand that you
13 are moving the second oldest business in
14 the City of Philadelphia to New Jersey
15 because we couldn't accommodate you, and
16 I was wondering if you could let us know
17 what happened and how many employees you
18 have that will be relocating.

19 MR. YOUNG: Well, I wasn't
20 quite prepared to discuss that, but I'll
21 be happy to. Councilman Green, as I
22 said, we've been in Philadelphia for a
23 long time and we desperately wanted to
24 stay in the City and finish my business
25 career and hopefully those who come after

1 10/23/08 - L&I - BILL 080433, etc.
2 me in the City of Philadelphia. We were
3 unable to find the real estate that we
4 needed.

5 The reason that we need to move
6 is, we've expanded. We've grown about
7 400 percent in the last four years and
8 we've grown right out of the facility
9 that we've been in since before I was
10 born.

11 We were able to locate a
12 potential facility down in the Navy Yard
13 and worked hard to purchase it and invest
14 millions of dollars in it. To be quite
15 frank, we were -- I felt we were really
16 rebuffed and that no one really cared
17 much. And I don't mean everybody here,
18 but the people within PIDC that we dealt
19 with really didn't seem to want to keep
20 us.

21 I find it amazing, because the
22 people that we employ make an average of
23 \$66 an hour in wages and fringe benefits.
24 Now, that may sound very high, but our
25 fellows work a lot of overtime and they

1 10/23/08 - L&I - BILL 080433, etc.
2 have disposable income. So we have
3 approximately 80 full-time employees, and
4 we moved last week our operations to New
5 Jersey. We're going to keep a sales
6 office here in Philadelphia, and I hope
7 some day that the opportunity will avail
8 itself for us to move back.

9 This is really strange, because
10 we're a company that wanted like the
11 dickens to stay here in Philadelphia, and
12 we tried for three years. We tried to
13 find a place. We tried to work with
14 PIDC, and it just didn't work.

15 COUNCILMAN GREEN: What was the
16 reason PIDC gave you for their
17 unwillingness to turn over the Rotan
18 Building for the old -- I think that's
19 the building you were looking at at the
20 Navy Yard.

21 MR. YOUNG: That's correct.
22 They were going to study the building to
23 see if there was potentially a better
24 use. I was told that if we were bringing
25 200 \$8-an-hour workers to the facility,

1 10/23/08 - L&I - BILL 080433, etc.
2 that that would be a much better
3 situation for the City than if we
4 retained our workforce there.

5 As a business aspect, I really
6 do find it amazing, because now the City
7 has to go out and they have to find 80
8 new jobs just to replace that which
9 they've lost just to get back to zero.

10 COUNCILMAN GREEN: Eighty jobs
11 at \$66,000 a year, which all pay five
12 percent wage tax.

13 MR. YOUNG: We were not asking
14 for any concessions. We asked for
15 nothing. We just wanted the opportunity
16 to buy a building, sink millions of
17 dollars into it and continue our work
18 here in Philadelphia.

19 Now, of course, we will
20 continue doing work in Philadelphia, but
21 we have a little bit over 200
22 Philadelphia vendors that we purchase
23 from and it's probably natural that as we
24 move to a different area, that over time
25 we'll probably gravitate towards vendors

1 10/23/08 - L&I - BILL 080433, etc.
2 who are closer to us, because many of our
3 customers need instant reactions to their
4 problems.

5 So we're really very, very
6 sorry to leave. I really wish it hadn't
7 happened.

8 COUNCILMAN GREEN: Well, we're
9 very sorry to see you go and we're
10 looking into why that happened in
11 separate hearings, and hopefully we'll
12 get you back some day.

13 Thank you very much, Mr. Young,
14 for your testimony, and Mr. Haigler.

15 COUNCILWOMAN SANCHEZ: Yes.
16 Any other questions?

17 I join my colleague Green in
18 our disappointment that that couldn't
19 happen.

20 For the record, I want to
21 acknowledge in parts of the packets that
22 my Council colleagues got there's a
23 letter of support from Frank Bardonaro
24 and Walter Palmer from the Builders
25 Association. So I wanted folks to know

1 10/23/08 - L&I - BILL 080433, etc.
2 that that's also on there.

3 Councilwoman Blondell Reynolds
4 Brown.

5 COUNCILWOMAN BROWN: Thank you
6 very much.

7 I simply want to go on the
8 record to acknowledge and commend
9 Councilman James Kenney. I clearly
10 remember when a light bulb went off last
11 year when you were talking about this,
12 and to see that it's come this far and
13 it's real.

14 The amazing part is for as long
15 as you've been in business, to my
16 knowledge, this bill has never had an
17 opportunity to be in play, if you will.
18 Had there been instances where employees
19 have been injured, now this bill would in
20 many ways capture those kind of
21 circumstances.

22 MR. YOUNG: Ma'am, this is not
23 reactionary in Philadelphia to an
24 accident that's occurred. This is some
25 really great work on the part of the City

1 10/23/08 - L&I - BILL 080433, etc.
2 of Philadelphia to say, Let's do what we
3 can to keep something from occurring.

4 Philadelphia is blessed by
5 having some really high-quality
6 craftspeople and equipment owners, and
7 we've had great success throughout the
8 years, but we can always do better.
9 Cranes have gone from simplicity to being
10 complicated, and I hope that in the
11 future we'll be able to expand this, not
12 just from the six or seven tower cranes
13 that work every day in the City, but to
14 the two or three hundred mobile cranes
15 that run around town lifting things as
16 well. I believe there's more that we can
17 do in the future, and I hope that
18 opportunity some day will be made
19 available.

20 COUNCILWOMAN BROWN: Thank you
21 for your testimony.

22 MR. YOUNG: Yes, ma'am.

23 COUNCILWOMAN SANCHEZ: Thank
24 you.

25 Thanks again to Councilman

1 10/23/08 - L&I - BILL 080433, etc.
2 Kenney for his leadership on this issue.

3 Is there anyone else here to
4 testify on Bill 080622?

5 (No response.)

6 COUNCILWOMAN SANCHEZ: Seeing
7 none, thank you very much, Mr. Young.

8 We will now move to Bill
9 080546, if the Clerk will read the bill,
10 please.

11 THE CLERK: 080546, an
12 ordinance amending Subcode "PM" (The
13 Philadelphia Property Maintenance Code)
14 of Title 4 of The Philadelphia Code,
15 entitled "The Philadelphia Building
16 Construction and Occupancy Code," by
17 amending Section PM-302.4, entitled
18 "Grading and Drainage," by adding certain
19 structures to the provisions prohibiting
20 the accumulation of stagnant water, and
21 making certain technical changes, all
22 under certain terms and conditions.

23 (Witnesses approached witness
24 table.)

25 COUNCILWOMAN SANCHEZ: In

1 10/23/08 - L&I - BILL 080433, etc.
2 addition to Mr. Haigler from L&I, we have
3 an Izzy Melhem from the Department of
4 Public Health, if he could join you.

5 We can start with Mr. Haigler.

6 MR. HAIGLER: Good afternoon.
7 In the interest of time, I'll synopsise
8 my testimony, if you don't mind, Madam
9 Chair.

10 COUNCILWOMAN SANCHEZ: Please.

11 MR. HAIGLER: Good afternoon,
12 Councilwoman Sanchez and members of the
13 Committee. I am Otis Haigler, Jr.,
14 Director of Legislative Affairs for the
15 Department of Licenses and Inspections.
16 Today I'm here to provide testimony on
17 Bill 080546, which, if enacted, will
18 amend provisions of the Property
19 Maintenance Code related to exterior
20 structures that are unsanitary and
21 improperly maintained, which causes the
22 retention of stagnant water to
23 accumulate, leading to the spread of
24 disease.

25 Inspections of this type are

1 10/23/08 - L&I - BILL 080433, etc.
2 already performed by the Department of
3 Licenses and Inspections and there will
4 be no problem in the future with the
5 Department conducting such inspections
6 for the additional structures that are
7 mentioned in the bill.

8 Thank you for the opportunity
9 to provide the Department's testimony on
10 this bill. I'll be happy to answer any
11 questions at this time.

12 COUNCILWOMAN SANCHEZ: Thank
13 you. We'll hear from Mr. Melhem, and
14 then if we have any questions.

15 Proceed.

16 MR. MELHEM: Thank you. Good
17 afternoon, Chairperson Quinones-Sanchez
18 and members of the Committee on Licenses
19 and Inspections. I am Izzat Melhem,
20 Acting Director of Environmental Health
21 Service in the Department of Public
22 Health. Thank you for the opportunity to
23 testify on Bill 080546, which will add
24 certain specific structures to the
25 provisions of the City's Property

1 10/23/08 - L&I - BILL 080433, etc.
2 Maintenance Code that prohibit the
3 accumulation of stagnant water in outdoor
4 vessels intended to contain moving or
5 recirculating water.

6 One of the missions of
7 Environmental Health Services is to
8 protect the health and quality of life of
9 Philadelphians through the control of
10 animals and insects that transmit
11 disease. Mosquitos are known to transmit
12 diseases, and in particular West Nile
13 Virus, to humans.

14 An objective of the
15 Department's Inspector Control Section is
16 to reduce human exposure to the bites of
17 mosquitos through a combination of
18 efforts that include public education,
19 insect treatment, insecticide treatment
20 for adult mosquitos and larvicide
21 treatment or elimination of mosquito
22 breeding sites.

23 Mosquitos spend three of their
24 four life cycles in water, and stagnant
25 water provides a necessary breeding site

1 10/23/08 - L&I - BILL 080433, etc.
2 for the species of mosquitos that carry
3 West Nile Virus. Eliminating even the
4 smallest quantities of standing water
5 outdoors during the warmer months offers
6 one of the safest, most environmentally
7 sound methods of reducing the population
8 of adult mosquitos in the area.

9 To put West Nile Virus disease
10 in perspective, to date in 2008, there
11 have been ten human cases of West Nile
12 Virus in Pennsylvania, with six of these
13 in Philadelphia residents. Nationally,
14 for the same period, there were 1,108
15 human cases, with 21 fatalities. These
16 numbers will likely increase for this
17 year, as cases generally continue to be
18 reported through October and early
19 November of any given year. In addition,
20 we know that urban areas are affected
21 disproportionately over rural regions
22 when West Nile Virus strikes.

23 As part of our mosquito control
24 program, staff survey outdoor areas
25 during the warmer months to determine

1 10/23/08 - L&I - BILL 080433, etc.
2 adult mosquito population densities,
3 locate mosquito breeding sites and take
4 appropriate follow-up action to remediate
5 the situation. They also respond to a
6 significant number of residents'
7 complaints of stagnant water on
8 neighbors' properties and unused swimming
9 pools and outdoor containers, where we
10 serve the responsible party with notice
11 to correct the problem.

12 We work cooperatively with
13 CLIP, the Community Life Improvement
14 Program, and the Department of Licenses
15 and Inspections making referrals for
16 further enforcement action or remediation
17 when needed. We also work with the
18 Managing Director's Office and the Police
19 Department to perform aerial surveillance
20 in residential areas known to have high
21 numbers of violative conditions on
22 residential properties.

23 Adding specific structures to
24 the provisions of the City's Property
25 Maintenance Code that would prohibit the

1 10/23/08 - L&I - BILL 080433, etc.
2 accumulation of stagnant water in outdoor
3 vessels can only help the Department of
4 Public Health in its continuing efforts
5 to eliminate mosquito breeding.

6 Thank you for allowing me to
7 present testimony today. I will now
8 answer any questions.

9 COUNCILWOMAN SANCHEZ: Any
10 questions?

11 I want to acknowledge
12 Councilman Greenlee.

13 COUNCILMAN GREENLEE: Thank
14 you, Madam Chair.

15 Just so I'm clear, who would
16 actually give the violations in this?
17 Would it be L&I or the --

18 MR. HAIGLER: The violations
19 are generally written by our CLIP
20 inspectors that are part of the --
21 operate under the Managing Director's
22 Office.

23 COUNCILMAN GREENLEE: All
24 right. I just wanted to make sure of
25 that.

1 10/23/08 - L&I - BILL 080433, etc.

2 Thank you.

3 MR. MELHEM: We also issue
4 violations. The Health Department also
5 issues violations.

6 COUNCILMAN GREENLEE: So you
7 both would or you both could, I guess?

8 MR. HAIGLER: Exactly.

9 COUNCILMAN GREENLEE: Okay.

10 COUNCILWOMAN SANCHEZ:
11 Councilman Green.

12 COUNCILMAN GREEN: Thank you.

13 What is the amount of the
14 violation, of a fine for violation of the
15 Code?

16 MR. HAIGLER: It's a \$75 ticket
17 that's issued to the property owner for
18 correction.

19 COUNCILMAN GREEN: And is that
20 enough to pay for the additional work and
21 inspections that are going to have to
22 occur, do you think? Is that a
23 satisfactory amount or should we be
24 looking at a higher amount?

25 MR. MELHEM: Well --

1 10/23/08 - L&I - BILL 080433, etc.

2 COUNCILMAN GREEN: I mean, has
3 there been any kind of economic analysis
4 on the cost of the additional inspections
5 that are going to have to be done?

6 MR. MELHEM: So you're asking
7 is the fine sufficient considering the
8 effort --

9 COUNCILMAN GREEN: Yes.

10 MR. MELHEM: -- the resources
11 we have to put forward?

12 COUNCILMAN GREEN: Yes.

13 MR. MELHEM: Generally, yes.
14 People usually comply on the first
15 inspection when we're out there.
16 Sometimes we may have to go back out
17 again, but usually it's the first time.

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

20 I want to once again commend a
21 fellow Council colleague for being
22 proactive and putting us probably what
23 would be in leadership among cities in
24 terms of best practices with regard to
25 this legislation. So thank you,

1 10/23/08 - L&I - BILL 080433, etc.
2 Councilwoman.

3 COUNCILWOMAN BROWN: Thanks,
4 Bill.

5 COUNCILWOMAN SANCHEZ:
6 Councilman Greenlee.

7 COUNCILMAN GREENLEE: Just a
8 point of information on Councilman
9 Green's point. If I remember right, I
10 think the fines at some point were
11 increased for the reason that was just
12 discussed, I think.

13 MR. HAIGLER: Well, those are
14 Code fines that are generally imposed by
15 a judge in court, which are different
16 than the tickets that are issued by the
17 inspectors for violations. There are two
18 different sections of the Code that apply
19 to this. So the ticket fines are \$75.
20 If the matter were to be referred to
21 court, if we did not get compliance, then
22 the judge could impose a fine up to the
23 statutory amount, the maximum statutory
24 amount.

25 COUNCILMAN GREENLEE: But

1 10/23/08 - L&I - BILL 080433, etc.
2 hadn't we increased that? Wasn't it
3 below 75 at one time?

4 COUNCILWOMAN SANCHEZ: We did
5 the sanitation tickets. We did the
6 sanitation tickets recently and in some
7 cases up to \$100, but it wasn't this one.

8 COUNCILMAN GREENLEE: All
9 right. Thanks.

10 Thank you.

11 COUNCILWOMAN SANCHEZ: Okay.
12 Well, thank you.

13 Is there anyone else here to
14 testify on Bill 080546?

15 (No response.)

16 COUNCILWOMAN SANCHEZ: Seeing
17 none, will the Clerk read the Bill
18 080433.

19 THE CLERK: 080433, an
20 ordinance amending Chapter 9-600 of The
21 Philadelphia Code, entitled "Services and
22 Other Businesses," by amending Section
23 9-610, entitled "Massage Businesses," by
24 amending the requirements for operation
25 of a massage business, under certain

1 10/23/08 - L&I - BILL 080433, etc.
2 terms and conditions.

3 COUNCILWOMAN SANCHEZ: Thank
4 you.

5 Mr. Haigler, would you please.

6 MR. HAIGLER: Good afternoon,
7 Councilwoman Quinones-Sanchez and members
8 of the Committee. I am Otis Haigler,
9 Jr., Director of Legislative Affairs for
10 the Department of Licenses and
11 Inspections. Today I'm here to provide
12 testimony on Bill 080433, which, if
13 enacted, will amend Section 9-610 of The
14 Philadelphia Code related to massages in
15 order to remove the prohibition with
16 regard to massages that are performed by
17 licensed masseuses on persons of the
18 opposite sex.

19 The provisions related to
20 massages and how they are performed was
21 first added to The Philadelphia Code in
22 1963. Without comment, the Department
23 offers no objection to the enactment of
24 this ordinance.

25 Thank you for the opportunity

1 10/23/08 - L&I - BILL 080433, etc.
2 to provide the Department's testimony,
3 and I will be happy to answer any
4 questions.

5 COUNCILWOMAN SANCHEZ: Thank
6 you. I'm sorry. Does Councilman Clarke
7 want to speak to this bill?

8 COUNCILMAN CLARKE: Madam
9 Chair, I just want to say that this bill
10 is by request.

11 COUNCILMAN GREENLEE: From who?

12 COUNCILWOMAN SANCHEZ: Yes.

13 Thank you.

14 Is there anyone else to testify
15 on this bill?

16 (Witnesses approached witness
17 table.)

18 MR. SKLAROFF: Good afternoon.
19 My name is Neil Sklaroff. I'm an
20 attorney with Ballard Spahr here in
21 Philadelphia, and with me today is
22 Richard Lombardo, who is known to you
23 all, but he is a project manager with our
24 firm and formerly Acting Executive
25 Director of the Planning Commission and

1 10/23/08 - L&I - BILL 080433, etc.
2 long-time civil servant.

3 We appear before the Committee
4 in support of this bill, an ordinance
5 amending Section 9-610 of The
6 Philadelphia Code that regulates services
7 and other businesses. Specifically, this
8 bill would strike Section 9-610.4 that
9 makes the treatment by a masseur or
10 masseuse of a person of the opposite sex
11 unlawful.

12 For the following reasons we
13 submit that this section is unnecessary
14 to protect the public interest and stands
15 as an impediment to the operation of spas
16 and salons in Philadelphia: As you may
17 know, Section 610 regulates massage
18 businesses and Section 9-611 regulates
19 masseurs and masseuses. Subsequent to
20 the adoption of those ordinances, City
21 Council amended Section 14-1605 of the
22 Zoning Code to include a business that
23 offers massage among the City's regulated
24 uses. The result of that action was to
25 equate a health or a beauty spa or salon

1 10/23/08 - L&I - BILL 080433, etc.
2 with adult uses.

3 As a regulated use and to
4 operate lawfully, a business that offers
5 massage treatment as a component of its
6 business must meet the strict
7 requirements of the regulated use
8 ordinance or meet the strict requirements
9 for a variance.

10 Over the years, we have
11 represented numerous health spas located
12 in leading Philadelphia hotels and
13 secured variances for the massage
14 component. However, to obtain a variance
15 requires a process that subjects the
16 applicant and the use to great public
17 scrutiny. An applicant must meet with
18 the appropriate Councilperson and with
19 local civic associations. Generally this
20 results in agreements in operating
21 conditions that address local concerns.
22 These agreements deal with a specific
23 business that impacts on specific and
24 special neighborhoods.

25 After that, the applicant and

1 10/23/08 - L&I - BILL 080433, etc.
2 the use must pass muster with the Zoning
3 Board of Adjustment, which again can
4 attach conditions. This is a process
5 that protects, in a much more effective
6 manner, the public interest to a greater
7 extent than does the prohibition subject
8 to today's action.

9 We appear today to speak on
10 behalf of the developers of 10
11 Rittenhouse Square, the owners of the
12 Alison Building within that project and
13 the Elizabeth Arden Red Door Spa, which
14 will soon open on Rittenhouse Square.

15 In our research for these
16 clients, we became aware of Section
17 9-610, Subsection 4. From further
18 research, we discovered that the section
19 is not, and maybe has never been,
20 enforced in Philadelphia. We believe in
21 fact that this section, for the most
22 part, is just unknown. Elizabeth Arden
23 Red Door Spa, however, having secured its
24 zoning variance for its massage
25 component, intends to comply with all

1 10/23/08 - L&I - BILL 080433, etc.
2 rules and regulations of the City, and
3 because of that, we asked Councilman
4 Clarke to introduce this legislation.

5 We are particularly grateful to
6 Councilman Clarke and to you folks. You
7 have things that are much more popular to
8 champion and to discuss than this matter,
9 but we do ask for the Committee's
10 favorable action in regard to this to do
11 away with -- which is probably a dinosaur
12 regulation and something that just
13 doesn't make sense with regard to the
14 other protections that are available
15 under the various City codes.

16 We thank you very much and
17 we'll be pleased to answer any questions.

18 COUNCILWOMAN SANCHEZ: Any
19 questions from my colleagues?

20 (No response.)

21 COUNCILWOMAN SANCHEZ: Thank
22 you very much.

23 If there's no one here --
24 Councilman Clarke.

25 COUNCILMAN CLARKE: For the

1 10/23/08 - L&I - BILL 080433, etc.
2 record, I just want to make sure that --
3 I do understand, but for the record, I
4 want to make sure that it's understood
5 that I understand.

6 Essentially, currently there
7 are a significant number of regulations
8 on the books for spas and parlors,
9 massage parlors, and it also requires
10 certain zoning variances, certain
11 community sign-offs, meeting with the
12 local elected official, things of that
13 nature.

14 MR. SKLAROFF: Section 9-610
15 and 611 have a number of requirements
16 requiring licensing, education and the
17 like for the operation of that business
18 all in Philadelphia. Because if a beauty
19 salon has a massage component, if a nail
20 salon has a massage chair, if somebody
21 wants to give a foot massage as part of a
22 pedicure -- these are all things that
23 I've been told about. I don't know
24 personally. But if those things want to
25 happen, that is a regulated use and they

1 10/23/08 - L&I - BILL 080433, etc.
2 need to go get a variance, and the
3 practical part of getting a variance is
4 that we need to go to our Councilpeople
5 to get an okay there. We meet with
6 people on the community and civic
7 associations, and if they have particular
8 concerns about the operation, time, hours
9 and the like, that's incorporated either
10 into an agreement or conditions which the
11 Zoning Board of Adjustment would pass.

12 COUNCILMAN CLARKE: And the
13 only thing that this particular bill does
14 is essentially legally authorize a
15 practice that has been in effect as it
16 relates to a male and a female being able
17 to massage a male or a female.

18 MR. SKLAROFF: A licensed
19 practitioner of massage will be able to
20 give a treatment to somebody regardless
21 of whether they're of the same sex or
22 not. That's the only thing that this
23 bill does.

24 COUNCILMAN CLARKE: That's the
25 only thing this bill does.

1 10/23/08 - L&I - BILL 080433, etc.

2 MR. SKLAROFF: Absolutely.

3 COUNCILMAN CLARKE: This
4 basically legalizes what's been taking
5 place in the City of Philadelphia in that
6 respect.

7 MR. SKLAROFF: I think so. And
8 I will say we have not, even though we've
9 done this for half a dozen high-end
10 salons, we've never come across this
11 before, and suspect that those
12 institutions have been unaware of this
13 provision.

14 COUNCILMAN CLARKE: Thank you.
15 Thank you, Madam Chair.

16 COUNCILWOMAN SANCHEZ:
17 Councilman Green.

18 COUNCILMAN GREEN: I do want to
19 thank you for bringing this to our
20 attention and also want to suggest to you
21 and to L&I that where there are
22 provisions of the Code that simply are
23 either not enforced or for some reason
24 society has moved way beyond that point,
25 please let us know. We should not have

1 10/23/08 - L&I - BILL 080433, etc.
2 laws on the books that we do not enforce.
3 It creates unnecessary expense. It makes
4 the Code confusing to people who are
5 trying to come and do business here in
6 Philadelphia. So thank you for bringing
7 this to our attention.

8 MR. SKLAROFF: Well, thank you.
9 And let me point one other thing out. We
10 would not have bothered Council, but
11 there was no way to get a waiver or a
12 variance or any other kind of relief from
13 this provision. There's just no board to
14 appeal to. So, again, we appreciate the
15 indulgence of Council and the Committee.

16 COUNCILWOMAN SANCHEZ: Thank
17 you very much.

18 If there's no one else to
19 testify, we're going to close our public
20 hearing and go into our public meeting.

21 The Committee on L&I will
22 consider Bill 080622. I'm going to
23 recognize my Council colleague Greenlee
24 for the proposed amendment.

25 COUNCILMAN GREENLEE: Thank

1 10/23/08 - L&I - BILL 080433, etc.
2 you, Madam Chair. I offer an amendment
3 that was proposed by the sponsor,
4 Councilman Kenney, and I move the
5 adoption of that amendment.

6 (Duly seconded.)

7 COUNCILWOMAN SANCHEZ: All in
8 favor of the amendment to Bill 080622
9 signify by saying aye.

10 (Aye.)

11 COUNCILWOMAN SANCHEZ: Anybody
12 opposed?

13 (No response.)

14 COUNCILWOMAN SANCHEZ: Any
15 abstentions?

16 (No response.)

17 COUNCILWOMAN SANCHEZ: The
18 amendment is accepted, and, therefore, if
19 Councilman Greenlee will so move the bill
20 as amended.

21 COUNCILMAN GREENLEE: Thank
22 you, Madam Chair. I move Bill No.
23 080622, as amended, be reported out of
24 this committee with a favorable
25 recommendation and move further that the

1 10/23/08 - L&I - BILL 080433, etc.
2 rules of Council be suspended to allow
3 for first reading at our next session of
4 Council.

5 COUNCILWOMAN SANCHEZ: Do I
6 hear a second?

7 (Duly seconded.)

8 COUNCILWOMAN SANCHEZ: All in
9 favor?

10 (Aye.)

11 COUNCILWOMAN SANCHEZ: Any
12 opposition?

13 (No response.)

14 COUNCILWOMAN SANCHEZ:
15 Abstentions?

16 (No response.)

17 COUNCILWOMAN SANCHEZ: Okay.
18 Bill 080622 has passed and will be
19 recommended out of Committee, with a
20 request for the suspension of the rules
21 and it will be heard at our next public
22 session.

23 With that, I'd like to
24 recognize my colleague Bill Green for a
25 motion on Bill 0805 -- I want to

1 10/23/08 - L&I - BILL 080433, etc.
2 recognize Councilwoman Blondell Reynolds
3 for a motion on Bill 080546.

4 COUNCILWOMAN BROWN: Thank you,
5 Madam Chair. I move that Bill 080546 be
6 moved out of Committee with a favorable
7 recommendation and further move that the
8 rules of Council be suspended so as to
9 permit first reading.

10 (Duly seconded.)

11 COUNCILWOMAN SANCHEZ: All in
12 favor signify by saying aye.

13 (Aye.)

14 COUNCILWOMAN SANCHEZ: Any
15 abstentions, opposition?

16 (No response.)

17 COUNCILWOMAN SANCHEZ: So we'll
18 move Bill 080546, with a request for the
19 rules to be suspended and it will be
20 heard at our next public session.

21 With that, I acknowledge
22 Councilman Green for a motion on Bill
23 080433.

24 COUNCILMAN GREEN: I move that
25 Bill No. 080433 be reported out of this

1 10/23/08 - L&I - BILL 080433, etc.
2 committee with a favorable recommendation
3 and, further, that the rules be suspended
4 to permit a first reading in Council at
5 the next Council session.

6 (Duly seconded.)

7 COUNCILWOMAN SANCHEZ: All in
8 favor signify by saying aye.

9 (Aye.)

10 COUNCILWOMAN SANCHEZ: Any
11 opposition, abstentions?

12 (No response.)

13 COUNCILWOMAN SANCHEZ: Seeing
14 none, we will approve Bill 080433 and it
15 will be on our next public session.

16 I want to thank you for coming.
17 With no other business, we will close the
18 meeting.

19 Councilman Green?

20 COUNCILMAN GREEN: I wanted to
21 move to adjourn.

22 COUNCILWOMAN BROWN: Second.

23 COUNCILWOMAN SANCHEZ: Move to
24 adjourn, seconded by Councilwoman
25 Blondell Reynolds.

1 10/23/08 - L&I - BILL 080433, etc.

2 This concludes our public
3 session for the Committee on Licenses and
4 Inspections.

5 Thank you, everyone.

6 (Committee on Licenses and
7 Inspection adjourned at 1:45 p.m.)

8 - - -

1
2 CERTIFICATE

3 I HEREBY CERTIFY that the
4 proceedings, evidence and objections are
5 contained fully and accurately in the
6 stenographic notes taken by me upon the
7 foregoing matter on October 23, 2008, and that
8 this is a true and correct transcript of same.
9

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15 _____
16 MICHELE L. MURPHY
17 RPR-Notary Public
18

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20 transcript does not apply to any reproduction
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