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COUNCIL OF THE CITY OF PHILADELPHIA

3

COMMITTEE OF THE WHOLE

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Room 400, City Hall
Philadelphia, Pennsylvania
Thursday, April 15, 2010
9:50 a.m.

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PRESENT:

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COUNCIL PRESIDENT ANNA C. VERNA

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COUNCILWOMAN JANNIE BLACKWELL

COUNCILMAN DARRELL L. CLARKE

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COUNCILMAN FRANK DiCICCO

COUNCILMAN W. WILSON GOODE, JR.

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COUNCILMAN BILL GREEN

COUNCILMAN WILLIAM GREENLEE

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COUNCILMAN CURTIS JONES, JR.

COUNCILMAN JACK KELLY

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COUNCILMAN JAMES F. KENNEY

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COUNCILMAN BRIAN J. O'NEILL

COUNCILWOMAN MARIA QUINONES-SANCHEZ

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COUNCILWOMAN DONNA REED MILLER

COUNCILWOMAN BLONDELL REYNOLDS BROWN

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COUNCILMAN FRANK RIZZO

COUNCILWOMAN MARIAN B. TASCIO

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BILL 100212 - An ordinance amending Section
20-304, entitled "Compensation for Members of
Boards, Commissions, Committees and Councils,"
by revising the compensation for members of
the Board of Revision of Taxes, under certain
terms and conditions.

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COUNCIL PRESIDENT Verna: This

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is a public hearing of the Committee of

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the Whole regarding Bill No. 100212.

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I would ask Mr. McPherson to

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please read the title of the bill.

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MR. McPHERSON: An ordinance

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amending Section 20-304, entitled

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"Compensation for Members of Boards,

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Commissions, Committees and Councils," by

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revising the compensation for members of

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the Board of Revision of Taxes, under

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certain terms and conditions.

14

COUNCIL PRESIDENT Verna: Thank

15

you.

16

Mr. Armbrister.

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(Witnesses approached witness

18

table.)

19

COUNCIL PRESIDENT Verna: Good

20

morning.

21

MR. ARMBRISTER: Good morning.

22

COUNCIL PRESIDENT Verna:

23

Please identify yourself for the record

24

and proceed with your testimony.

25

MR. ARMBRISTER: Good morning.

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2 I'm Clarence Armbrister, Mayor Nutter's
3 Chief of Staff.

4 Good morning, Council President
5 Verna and members of the Committee. I am
6 Clarence Armbrister, Chief of Staff to
7 Mayor Nutter, and I'm here to testify
8 this morning in support --

9 COUNCIL PRESIDENT VERNA: Just
10 a minute, please. Do we have copies of
11 your testimony?

12 MR. ARMBRISTER: I think they
13 have been distributed.

14 COUNCIL PRESIDENT VERNA: I'm
15 sorry. Please proceed. We do have it.

16 MR. ARMBRISTER: Sorry.

17 And I'm here to testify in
18 support of Bill No. 100212, which would
19 reduce the salaries of members of the
20 Board of Revision of Taxes.

21 Under this bill, salaries would
22 be reduced to \$18,700 for members of the
23 Board and \$19,250 for the Chair. This
24 change would more closely align the
25 salaries of the members of the BRT with

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2 those of other boards and commissions who
3 work similar schedules.

4 The board of the BRT typically
5 holds hearings two or three times a week
6 for about three hours, but their salaries
7 of 70,000, 72,000 for the secretary and
8 75,000 for the Chair are far higher than
9 those of members of other boards and
10 commissions who provide vital services
11 for the City.

12 For example, the Zoning Board
13 meets two days a week for three and a
14 half to four and a half hours. Its
15 members are paid per meeting attended and
16 have received about an average of about
17 \$20,000 per member last fiscal year.
18 Members of the Civil Service Commission
19 earned up to 17,500 in FY09.

20 Members of other boards, all of
21 which typically meet two times per week,
22 earn far less. All of the members of the
23 Tax Review Board and the L&I Review Board
24 made less than 10,000 in FY09.

25 It is hard to justify why the

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2 members of the BRT make more than three
3 times as much as the members of the next
4 highest paid board, and it is certainly
5 difficult to defend the City paying
6 \$70,000 for what is only part-time work,
7 particularly at a time when the
8 Administration and City Council are
9 working together to try to find a way to
10 fill a \$150 million hole in the FY11
11 budget.

12 That concludes my testimony and
13 I'd be happy to answer any questions that
14 members of the Committee may have, and
15 I'm joined this morning by Finance
16 Director Rob Dubow and City Solicitor
17 Shelley Smith.

18 COUNCIL PRESIDENT VERNA: Thank
19 you very much.

20 Are there any questions from
21 members of the Committee?

22 (No response.)

23 COUNCIL PRESIDENT VERNA:

24 Seeing none, thank you.

25 MR. ARMBRISTER: Thank you.

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2 COUNCIL PRESIDENT Verna: Our
3 next witness?

4 MR. McPHERSON: Ken Metzner.
5 (Witness approached witness
6 table.)

7 COUNCIL PRESIDENT Verna: Good
8 morning, sir. Welcome.

9 MR. METZNER: Good morning.
10 Thank you.

11 COUNCIL PRESIDENT Verna:
12 Please identify yourself for the record.

13 MR. METZNER: I am the Reverend
14 Ken Metzner, a resident of the 900 block
15 of Kimball Street, which was one of the
16 City's hardest hit blocks with respect to
17 the arbitrariness of the most recent spot
18 assessments by the BRT.

19 I have testified here before in
20 favor of the legislation that voters will
21 act on in May to abolish the current BRT,
22 and I certainly have been a vocal critic
23 of the BRT's practices. I am not a fan
24 of the BRT as an institution. I am,
25 however, a proponent of the democratic

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2 process, of the importance of civil
3 discourse and of the bedrock principles
4 of fairness and respect, and that is what
5 brings me here today.

6 As I was considering my
7 testimony this morning, I was reminded of
8 a thought by the great Christian mystic,
9 Father Thomas Merton. He said, One of
10 the moral diseases we communicate to one
11 another in society comes from huddling
12 together in the pale light of an
13 insufficient answer to a question we are
14 afraid to ask.

15 I submit that with respect to
16 this bill, there are several questions
17 that are not being asked. First, what is
18 its true intention and motivation, and is
19 that intention appropriate? To couch
20 this bill as the Administration has in
21 terms of a mere money-saving measure is
22 misleading. The bill should be called
23 what it is, retaliation for the BRT's
24 refusal to renew the Memorandum of
25 Understanding. To call it anything else

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2 distorts reality. And to do so I believe
3 suggests that we are uncomfortable with
4 that factual truth, and for good reason.
5 There is something unseemly about
6 participating in this game of
7 one-upsmanship, finger-pointing and
8 name-calling. The City deserves
9 enlightened leadership, inspired
10 leadership. We are not seeing that
11 today.

12 The paralysis with the BRT is
13 bad for everybody, not just the BRT. I
14 submit that this measure continues a
15 degenerative trend. It institutionalizes
16 vindictiveness rather than leading us to
17 higher ground, common ground.

18 Tone and tenor are important in
19 this Chamber and in this process. The
20 spirit and intention behind legislation
21 are important. Doesn't our city deserve
22 better?

23 Fairness and proportionality
24 are important as well. Two of the BRT
25 members have been on the job for several

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2 weeks. They clearly have had nothing to
3 do with the decades-long history of
4 mismanagement that has led us to where we
5 are today. Is it appropriate to reduce
6 their salaries by 75 percent? And what
7 precedent does it set to do this, when
8 the law prevents an Administration from
9 removing from office an intransigent
10 official. Should we sanction actions
11 that seek to subvert the law by engaging
12 in this kind of conduct?

13 There are other concerns which
14 I believe also are not being addressed.
15 Mr. Armbrister just testified on behalf
16 of the Mayor's Office that salaries of
17 \$18,000 and \$19,000 are appropriate. If
18 that is so, I ask how can those salaries
19 be reconciled with the much higher ones
20 in the referendum that voters are asked
21 to vote on May 18th? The referendum that
22 Council has submitted to the voters says,
23 in part, that the Chair of the Board
24 shall receive an annual salary of
25 \$50,000. The secretary of the BRT shall

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2 receive an annual salary of \$45,000, and
3 its each remaining member of the Board
4 shall receive a per diem of \$150 for each
5 day up to a maximum of \$40,000. I would
6 like to know which are the appropriate
7 salaries. Is it the ones that Council
8 and the Mayor have submitted to the
9 voters at \$50,000, \$45,000 and \$40,000 or
10 is it \$18,000 or \$19,000? If it is the
11 latter, then I submit that the current
12 referendum needs to be reformed. At a
13 minimum, we need an answer to that
14 question.

15 Secondly, even if we assume
16 that the payroll savings are the true
17 motivation, which I submit they are not,
18 will those savings be realized? Have we
19 heard any testimony about the amount of
20 savings? We have not here, because I
21 submit it is an embarrassing low amount
22 of savings. I have done a calculation,
23 and I'm more than happy to stand
24 corrected if my numbers are not right,
25 but by my calculation, the grand total

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2 savings will be \$167,000 over the next
3 five and a half months. That is because
4 the current payroll for the BRT,
5 excluding benefits, is -- for the BRT
6 members is about \$41,000 per month. This
7 proposed bill reduces that to about
8 \$11,000 per month. However, the
9 referendum that this body has asked
10 voters to approve will raise those
11 salaries again to \$24,000 per month
12 effective October 1. Therefore, we're
13 looking at a savings of five and a half
14 months times approximately \$30,000, for a
15 grand total of approximately \$167,000.

16 I would like to hear whether we
17 honestly believe that those savings are
18 worth this effort, are they worth the
19 integrity of this institution, or are
20 they worth the costs that most certainly
21 will be realized when the BRT challenges
22 this measure in court, which they
23 assuredly will do. Won't those savings
24 of \$167,000 be more than offset by the
25 costs associated with the legal battle?

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2 I would submit moreover -- and
3 I'm glad to see Ms. Smith here -- that
4 enacting this measure actually undercuts
5 the City's legal position. The City has
6 argued that the BRT in its petition
7 before the Supreme Court lacks standing
8 because it has not actually suffered any
9 harm, and that any harm that it might
10 suffer at this point is theoretical until
11 October 1st if and when the legislation
12 is enacted. By enacting the legislation
13 today, which is effective immediately,
14 the 75 percent reduction in salary
15 creates the harm that the City has argued
16 does not currently exist. So I think it
17 is something that this body should
18 consider.

19 In addition, I have questions
20 that I am not seeing examined concerning
21 the legality of the Memorandum of
22 Understanding. One court has already
23 raised very serious concerns about it.
24 I'm referring to Judge DiVito's decision
25 in the Court of Common Pleas of February

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2 16th, 2010. That was the case where one
3 of the employees of the BRT brought an
4 action to declare that the Memorandum of
5 Understanding was an illegal transfer of
6 power from the BRT to the City in
7 violation of State law, and she claimed
8 that she was being harmed by virtue of
9 that. Now, the judge decided she had no
10 standing at that point because she had
11 not actually been harmed. However, the
12 judge said, and I quote, "The City
13 defends the provisions of the Memorandum
14 of Understanding in its brief. The Court
15 finds this argument disingenuous and
16 unpersuasive. The actions provided for
17 pursuant to the Memorandum of
18 Understanding are clearly a usurpation of
19 the exclusive powers of City Council."

20 I have not heard any testimony
21 nor do I know of any analysis that looks
22 at that issue, and I would be willing to
23 wager that that is something that the BRT
24 will raise when it files its anticipated
25 legal challenge to this.

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2 Finally and, in my view, most
3 importantly, how does this measure
4 advance the efforts to reform the BRT's
5 practices? We haven't heard how a salary
6 reduction of 75 percent will energize
7 anyone to engage in reform. It is more
8 likely to have the opposite effect. The
9 bill is, therefore, flawed, because it
10 also appears to rest on at least two
11 unsupported assumptions, in my view.
12 First is the existence of a plan to fix
13 the problems at the BRT, and, second,
14 frustration of that plan by virtue of the
15 BRT's refusal to extend the Memorandum of
16 Understanding.

17 We have not heard any testimony
18 with respect to planned actions over the
19 next five and a half months that now
20 purportedly are being frustrated by
21 virtue of the BRT's intransigence over
22 the Memorandum of Understanding. So I
23 don't believe that this bill gets to the
24 heart of the matter, which is reform.

25 I submit that any action on

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2 this bill should be deferred until such
3 time as it can be part of a more
4 comprehensive dialogue that considers
5 these and other issues.

6 Thank you.

7 COUNCIL PRESIDENT VERNA: Thank
8 you very much for taking the time to come
9 in to express your views.

10 Are there any other witnesses
11 that would like to testify?

12 (No response.)

13 COUNCIL PRESIDENT VERNA:

14 Seeing none, this will conclude -- oh,
15 before I forget, I did receive a letter
16 from the Committee of Seventy regarding
17 this matter. It will be made part of the
18 record. I'm giving that to the
19 stenographer.

20 This will conclude our public
21 hearing. We will now go into --

22 COUNCILMAN O'NEILL: Madam
23 President?

24 COUNCIL PRESIDENT VERNA: Yes.
25 The Chair recognizes Councilman O'Neill.

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2 COUNCILMAN O'NEILL: Yes. I'd
3 just like to put some comments about an
4 amendment I'm going to offer on the --
5 which I've circulated.

6 COUNCIL PRESIDENT VERNA: Would
7 you speak into your microphone, please.

8 COUNCILMAN O'NEILL: On the
9 record in the public hearing.

10 COUNCIL PRESIDENT VERNA:
11 Please.

12 COUNCILMAN O'NEILL: In case
13 there's any questions or anything.

14 I have an amendment that would
15 hopefully be a better way of doing
16 whatever it is we're trying to do. I
17 don't want to put a label on what we're
18 trying to do, but it is an unusual act
19 we're taking. We all know that. And
20 it's my understanding that the dispute
21 here between the Board and the City, the
22 Administration and Council is whether we
23 have the authority to appoint or change
24 the structure of the appeals function.
25 The assessment is more or less conceded,

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2 we can do that. I don't think anybody
3 questions whether we can set the salary
4 of the members. And it occurred to me
5 that since we're only -- a Court is going
6 to decide whether this Board stays,
7 because we don't have the authority, or
8 that the ordinance that will hopefully
9 pass on the ballot becomes the law and a
10 new Board is established under those
11 guidelines. The only thing we're talking
12 about here is what should they be paid.
13 We have that authority.

14 We've already established and
15 had passed and signed by the Mayor the
16 bill that sets the salary of what we hope
17 is the new Board approved by the voters
18 and approved by the Court, who is hearing
19 that case that I referred to.

20 So it seems to me a more direct
21 way of doing this and less complicated
22 and, frankly, I find it much easier to
23 justify is just take the salaries out of
24 that bill that's going before the voters
25 that's going to be the salary later and

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2 make it the salary now, because at the
3 time, we didn't know we had a dispute
4 that the Board wanted to and is in court
5 trying to stay as the Appeals Board of
6 the assessments.

7 So this language was prepared
8 by the Solicitor. It basically reflects
9 those numbers, and I offer it as an
10 amendment to this bill, basically
11 removing the 70 to 18 and so on to
12 exactly what we've already passed and
13 sent to the voters in the reform
14 legislation and just change the level.
15 Because everything has changed in the
16 last week or so, two weeks, and it seems
17 to me that this is logical to also change
18 since this Board -- we didn't anticipate
19 this Board doing this, what has happened,
20 the court appeal.

21 So I'm offering this, and it's
22 pretty straightforward. We all know the
23 salaries and per diems and the caps that
24 were in the original legislation, and
25 I've talked to several members and seemed

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2 okay with this and I hope all the members
3 are.

4 COUNCIL PRESIDENT VERNA:

5 Before you make your motion, I'd like to
6 recognize Councilman Green.

7 COUNCILMAN GREEN: Thank you,
8 Madam Chair.

9 I just received this this
10 morning. Councilman O'Neill came over
11 and explained it to me. I'm not sure I
12 agree with the logic or the premise
13 behind introducing this, because what the
14 BRT is asking for in their lawsuit is for
15 the ballot measure not to be put on the
16 ballot, which means if they are
17 successful in their lawsuit, the BRT will
18 stay in place with all assessors and
19 other people working for the BRT and we
20 would have to reintroduce a bill, leaving
21 the BRT in place and doing the assessment
22 function separately and reauthorize that
23 and repass.

24 So I don't think that sort of
25 the logic here holds water with respect

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2 to this. It's really -- we're just --
3 this bill is about how much we want to
4 pay the current members of the BRT. I
5 want to pay them \$18,700 a year and not
6 \$45,000 or \$50,000 a year. It's that
7 simple. The question is that simple.
8 It's not that complicated. We get to set
9 salaries in this body for that Board, and
10 I don't think we should adjust the amount
11 of salary from what the Mayor requested.

12 It's a very simple issue, what
13 do we think this current Board is worth.
14 Are they worth \$18,700 a year or are they
15 worth \$45,000 or \$50,000 a year? I think
16 that they're worth \$18,700 a year. And
17 when this comes up in the public meeting,
18 I urge my colleagues to reject this
19 amendment and pass the bill as the Mayor
20 has sent it down to us, unless someone
21 can tell me that this is what Mayor
22 Nutter wants.

23 Thank you, Madam Chair.

24 COUNCIL PRESIDENT VERNA: Thank
25 you.

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2 The Chair recognizes Councilman
3 Goode.

4 COUNCILMAN GOODE: Thank you,
5 Madam President.

6 I was not going to speak. I
7 believed there would be no debate and
8 that people would automatically support
9 this amendment. I actually believe that
10 most of what the witness said was
11 actually true. I was not prepared to
12 support the bill as presented by the
13 Mayor. I think that we've already gone
14 through the legislative process to decide
15 what the salaries should be. And we're
16 not setting the salaries for a current
17 Board. Instead, we're setting salaries
18 for the Board, period, until and unless
19 those salaries are changed by a Charter
20 amendment that that is approved.
21 Therefore, when we pass a bill that's
22 going to become law, it is something that
23 is permanent until amended. So it is
24 vindictive to set salaries for a certain
25 set of people as opposed to what you

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2 believe the job should pay. So I will be
3 supporting the amendment.

4 Thank you, Madam President.

5 COUNCIL PRESIDENT VERNA: The
6 Chair again recognizes Councilman
7 O'Neill.

8 COUNCILMAN O'NEILL: I move the
9 adoption of the amendment at the
10 appropriate time.

11 COUNCILMAN GREEN: We have to
12 go into the --

13 COUNCILMAN O'NEILL: I move the
14 adoption.

15 COUNCIL PRESIDENT VERNA: I'm
16 sorry. Your microphone is not on. I
17 can't hear you.

18 COUNCILMAN O'NEILL: I'm sorry.
19 I'll wait until the public meeting to
20 introduce it --

21 COUNCIL PRESIDENT VERNA: Thank
22 you.

23 COUNCILMAN O'NEILL: -- and
24 move it, but I wanted to get it on the
25 record in the public hearing, and I'm

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2 glad we had some discussion.

3 Thank you.

4 COUNCIL PRESIDENT VERNA: Thank
5 you.

6 Councilman Green, your light is
7 on. Do you want to be recognized?

8 COUNCILMAN GREEN: No, Madam
9 President.

10 COUNCIL PRESIDENT VERNA: Thank
11 you.

12 This will conclude our public
13 hearing. We will now go into our public
14 meeting, and the Chair recognizes
15 Councilman O'Neill.

16 COUNCILMAN O'NEILL: Madam
17 President, I move the adoption of the
18 amendment. And I'll hand it in. I've
19 circulated it, discussed it.

20 (Duly seconded.)

21 COUNCIL PRESIDENT VERNA: It
22 has been moved and seconded that the
23 amendment be adopted.

24 All in favor will indicate by
25 saying aye.

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2 (Aye.)

3 COUNCIL PRESIDENT VERNA: Those
4 opposed?

5 COUNCILMAN GREEN: No.

6 COUNCIL PRESIDENT VERNA: If
7 you'll raise your hand, I'll know who is
8 voting no.

9 Is the Chief Clerk here?

10 (No response.)

11 MS. ORTIZ: I'll do it.

12 COUNCIL PRESIDENT VERNA: We
13 will have a roll call.

14 MS. ORTIZ: Councilwoman
15 Blackwell.

16 COUNCILWOMAN BLACKWELL: No.

17 MS. ORTIZ: Councilman Clarke.

18 COUNCILMAN CLARKE: Aye.

19 MS. ORTIZ: Councilman DiCicco.

20 COUNCILMAN DiCICCO: Aye.

21 MS. ORTIZ: Councilman Goode.

22 COUNCILMAN GOODE: Aye.

23 MS. ORTIZ: Councilman Green.

24 COUNCILMAN GREEN: No.

25 MS. ORTIZ: Councilman

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2 Greenlee.
3 COUNCILMAN GREENLEE: Aye.
4 MS. ORTIZ: Councilman Jones.
5 COUNCILMAN JONES: Aye.
6 MS. ORTIZ: Councilman Kelly.
7 COUNCILMAN KELLY: Aye.
8 MS. ORTIZ: Councilman Kenney.
9 COUNCILMAN KENNEY: I abstain.
10 MS. ORTIZ: Councilwoman
11 Krajewski.
12 (No response.)
13 MS. ORTIZ: Councilwoman
14 Miller.
15 COUNCILWOMAN MILLER: Aye.
16 MS. ORTIZ: Councilman O'Neill.
17 COUNCILMAN O'NEILL: Aye.
18 MS. ORTIZ: Councilwoman
19 Reynolds Brown.
20 COUNCILWOMAN BROWN: Aye.
21 MS. ORTIZ: Councilman Rizzo.
22 COUNCILMAN RIZZO: Aye.
23 MS. ORTIZ: Councilwoman
24 Sanchez.
25 COUNCILWOMAN SANCHEZ: Aye.

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2 MS. ORTIZ: Councilwoman Tasco.

3 COUNCILWOMAN TASCO: Aye.

4 MS. ORTIZ: Council President

5 Verna.

6 COUNCIL PRESIDENT VERNA: Aye.

7 MS. ORTIZ: The ayes are 14,

8 the nays are two, Councilman Kenney

9 abstaining.

10 COUNCIL PRESIDENT VERNA: The

11 amendment is adopted.

12 The Chair recognizes

13 Councilwoman Tasco.

14 COUNCILWOMAN TASCO: Madam

15 Chair, I move we report the amendment out

16 of Committee.

17 (Duly seconded.)

18 COUNCIL PRESIDENT VERNA: With

19 a favorable recommendation, as amended.

20 COUNCILWOMAN TASCO: Well --

21 with a favorable recommendation.

22 COUNCIL PRESIDENT VERNA: It

23 has been moved and properly seconded that

24 the bill be reported out of Committee

25 with a favorable recommendation, as

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2 amended.

3 All in favor will indicate by
4 saying aye.

5 (Aye.)

6 COUNCIL PRESIDENT VERNA: Those
7 opposed?

8 (No response.)

9 COUNCIL PRESIDENT VERNA: The
10 ayes have it and the motion carries.

11 This concludes our public
12 hearing.

13 (Pause.)

14 COUNCIL PRESIDENT VERNA:
15 Councilwoman Tasco, I think we should be
16 asking for a suspension.

17 COUNCILWOMAN TASCO: Madam
18 President, I propose that the amendment
19 to Bill 100212 be reported out of
20 Committee with a favorable recommendation
21 and a recommendation for the rules of
22 Council to be suspended so that this
23 amendment can be heard at the next
24 session of Council.

25 COUNCIL PRESIDENT VERNA: It's

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2 a bill.

3 COUNCILWOMAN TASC0: I mean the
4 bill.

5 (Duly seconded.)

6 COUNCIL PRESIDENT VERNA: It
7 has been moved and seconded that Bill No.
8 100212 be reported out of Committee with
9 a favorable recommendation, as amended;
10 further, that the rules of Council be
11 suspended so as to permit first reading
12 at our next session of Council.

13 Thank you all very much.

14 (Committee of the Whole
15 concluded at 10:15 a.m.)

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CERTIFICATE

I HEREBY CERTIFY that the
proceedings, evidence and objections are
contained fully and accurately in the
stenographic notes taken by me upon the
foregoing matter on April 15, 2010, and that
this is a true and correct transcript of same.

MICHELE L. MURPHY
RPR-Notary Public

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