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COUNCIL OF THE CITY OF PHILADELPHIA
PUBLIC HEARING AND PUBLIC MEETING
BEFORE COUNCIL COMMITTEE ON
PUBLIC HEALTH AND HUMAN SERVICES

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Room 400, City Hall
Philadelphia, Pennsylvania
Wednesday, May 31, 2000
3:20 p.m.

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BILL 000314 - An ordinance, as amended on 5/14/00,
Amending Chapter 10-600 of Philadelphia Code,
entitled "Public Places - Prohibited Conduct," by
prohibiting smoking in certain public places and
in the workplace, with certain exceptions, and by
repealing current provisions set forth in Section
10-602 regulating smoking, all under certain terms
and conditions.

14

PRESENT: COUNCILWOMAN MARIAN B. TASCO, Chair
COUNCILMAN DARRELL L. CLARKE
COUNCILMAN DAVID COHEN
COUNCILMAN FRANK DICICCO
COUNCILMAN W. WILSON GOODE, JR.
COUNCILMAN RICHARD T. MARIANO
COUNCILWOMAN DONNA REED MILLER
COUNCILMAN MICHAEL A. NUTTER
COUNCILMAN ANGEL L. ORTIZ
COUNCILWOMAN BLONDELL REYNOLDS BROWN
COUNCILMAN FRANK RIZZO

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2 P R O C E E D I N G S

3 COUNCILWOMAN TASC0: Could I have your
4 attention, please. I'd like to call this session
5 together. This is the reconvening of the
6 Committee of Public Health and Human Services and
7 is a continuation of the hearing that we held on
8 May 14th. We do have a quorum present in the
9 persons of Councilman Rizzo, DiCicco, Vice Chair
10 Councilman Mariano, myself, and Councilman Nutter,
11 who's been appointed to the committee for this
12 session. We will have the clerk read the title of
13 the bill.

14 THE CLERK: Yes. This is Bill No.
15 000314, as amended on 5/24/00, which is an
16 ordinance amending Chapter 10-600 of the
17 Philadelphia Code entitled "Public Places -
18 Prohibited Conduct," by prohibiting smoking in
19 certain public places and in the workplace, with
20 certain exceptions repealing.

21 Thank you.

22 COUNCILWOMAN TASC0: Thank you very
23 much. We will open this hearing and take further
24 testimony on the amended bill distributed by
25 Councilman Nutter. We do have a list of

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2 witnesses, and if we don't plan to be here all
3 night, we ask all witnesses to be please be brief
4 in their presentations.

5 I first call forth Anita Batman, MD,
6 the Senior Adviser to the Surgeon General.

7 (Witness comes forward.)

8 COUNCILWOMAN TASC0: Good afternoon.
9 Would you identify yourself for the record and
10 proceed with your testimony.

11 DR. BATMAN: Good afternoon. Anita
12 Batman, MD, Senior Public health Advisor to the
13 Surgeon General.

14 COUNCILWOMAN TASC0: Thank you.

15 DR. BATMAN: And I was invited to speak
16 to the question of whether secondhand smoke was
17 harmful. The science in the office of the Surgeon
18 General and the data coming to us from the CDC is
19 unmistakable that secondhand smoke is a
20 carcinogen, number one; number two, is a
21 respiratory irritant and a trigger for asthma and
22 is contraindicated for anyone with any respiratory
23 ailment. It worsens all respiratory infections
24 and respiratory diseases.

25 A second thing that I would amend is

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2 that we're in an atmosphere of secondhand smoke,
3 certain groups of people are excluded, the
4 principal one being people who have respiratory
5 disabilities, asthmatics, people with emphysema
6 cannot enter places where secondhand smoke is
7 freely around them.

8 And people are asked not to take their
9 children into atmospheres of smoke. We have good
10 data that children who live in smoky atmospheres
11 miss more days of school, we know that children
12 who live in smoky atmospheres have more ear
13 infections, bronchitis, and that asthmatic
14 children absolutely must not go into places there
15 is free smoking.

16 And if you have any questions, I'll be
17 glad to answer them, but that is essentially what
18 I was asked to speak to.

19 COUNCILWOMAN TASCO: Are there any
20 questions from members of the committee?

21 The Chair recognizes Councilman Nutter.

22 COUNCILMAN NUTTER: Good afternoon,
23 Captain Batman.

24 There have been questions raised from
25 time to time about both the seriousness of the

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2 issue of secondhand smoke as well as questions
3 around various studies that have been made by a
4 variety of either governmental agencies or other
5 entities that have looked at this particular
6 issue.

7 Is there any question in your mind, as
8 a trained physician and the work that you do for
9 the United States Office of the Surgeon General,
10 is there any question in your mind about the
11 validity of studies either by the Surgeon
12 General's Office, the EPA, OSHA, or any other
13 legitimate research institution with regard to the
14 carcinogenic level of secondhand smoke?

15 DR. BATMAN: There is no doubt, and we
16 have plenty of evidence that squamous cell
17 carcinoma of the lung, the kind that's caused by
18 smoke, occurs in people who are in smoke-filled
19 environments who are not smokers.

20 COUNCILMAN NUTTER: Are there tests
21 that are done from time to time to determine for a
22 person who is a nonsmoker but who has possibly
23 been in an environmental tobacco smoke atmosphere
24 that can demonstrate that they have not only been
25 subjected to it, but that some of the those

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2 effects linger for some time?

3 DR. BATMAN: Yes, there are. We can
4 get urine nicotine levels, and people who have
5 just come out of smoke-filled rooms will have
6 nicotine levels in their urine just as if they
7 were smokers.

8 COUNCILMAN NUTTER: What's the effect
9 on people who either have respiratory problems or
10 asthma problems? Whether they can actually see
11 the smoke in the air or not, what happens to some
12 of those individuals if they enter that
13 environment? And what challenge does it present
14 to someone who has a condition like that to go
15 into that environment and possibly not know it?

16 DR. BATMAN: Smoke is a well-known
17 trigger for asthmatic attacks, and so any
18 asthmatic who goes into an area where people have
19 been smoking can have an acute asthma attack.
20 This is a problem because asthma is becoming more
21 prevalent and more serious than it was in previous
22 years, and we believe that's indoor air quality
23 that is responsible for the worsening of asthma in
24 general.

25 COUNCILMAN NUTTER: Lastly, let me ask

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2 -- we've been talking about this issue for some
3 time, although the Surgeon General's Office, in
4 numerous studies, over, I believe, at least
5 20-year, possibly longer, period of time has
6 issued reports with regard to the effects of
7 secondhand smoke or environmental tobacco smoke.
8 Are there any warnings that you think the members
9 of the general public need to have, similar to
10 other warnings that the Surgeon General has issued
11 with regard to toxic or carcinogenic substances?

12 DR. BATMAN: There have been no
13 official position on this, but the official
14 position on anything an adult does is informed
15 consent, so that any adult who is taking a health
16 risk needs to be informed of it.

17 COUNCILMAN NUTTER: And what would be
18 the form of that?

19 DR. BATMAN: Well, for example, the
20 legend on the tobacco pack, so that no adult would
21 unknowingly smoke cigarettes thinking that they
22 wouldn't hurt him, the label was put on there so
23 that the consenting adult fully informed takes
24 that risk with their health. This is a separate
25 situation, of course, from the people with

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2 respiratory disabilities and from children.

3 COUNCILMAN NUTTER: Well, how would the
4 person get notification about possible secondhand
5 smoke exposure? There's no pack with a warning on
6 it.

7 DR. BATMAN: Now we're conjecturing,
8 and this is -- this is an answer to your question
9 from myself and not an official governmental
10 position. Certainly, there could be a warning on
11 the door if you're about to enter a smoke-filled
12 environment so that people would know not to enter
13 with their children; or if they had a respiratory
14 disability, they would know that they were
15 endangering themselves and they wouldn't be taken
16 by surprise.

17 COUNCILMAN NUTTER: Okay.

18 DR. BATMAN: It's a logical answer to
19 your logical question.

20 COUNCILMAN NUTTER: Thank you very much
21 captain.

22 COUNCILWOMAN TASCO: Any further
23 questions of the captain?

24 (No further questions.)

25 COUNCILWOMAN TASCO: Thank you very

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2 much for your testimony.

3 We now recognize Grace Redden,
4 President of BOMA.

5 (Witness comes forward.)

6 MR. LAWRENCE: Well, I'm not Grace, but
7 I'm standing in for her.

8 COUNCILWOMAN TASCO: Okay.

9 MR. LAWRENCE: Good afternoon,
10 Chairwoman Tasco, Councilman Nutter, and members
11 of the Committee on Public Health and Human
12 Services and other members of City Council. My
13 name is Joe Lawrence, and as a board member of the
14 Building Owners and Managers Association (BOMA) of
15 Philadelphia, I would like to present testimony on
16 Bill 314.

17 Founded in 1916, BOMA Philadelphia
18 represents over 500 members who own or manage
19 approximately 100 million square feet of
20 commercial properties or provide services and
21 supplies to the properties in the Tristate area.
22 It is also one of more than 100 local
23 associations, with 17,000 members who own or
24 manage over 8.5 billion square feet of downtown
25 and suburban commercial facilities in North

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2 America and abroad.

3 BOMA supports two provisions of Bill

4 3141: 1. There shall be a prohibition against

5 smoking in the common areas, hallways, stairways,

6 toilet rooms, elevators, and lobbies of commercial

7 office buildings to which the public has access,

8 either as employees or as business invitees;

9 2. There should be a prohibition against smoking

10 within 20 feet of an entrance to any commercial

11 building.

12 While we are sensitive to and cognizant

13 of individuals' rights to engage in any activity

14 not deemed illegal -- in other words, the

15 individual's rights of personal freedom -- we

16 believe that this freedom does not extend so far

17 as to deprive other individuals of their rights.

18 An adult should have the right to smoke as a

19 personal freedom, but should not have the right to

20 abridge the freedom of another who wishes not to

21 smell or inhale the smoke.

22 In its simplest terms and without going

23 into detail about the growing body of evidence

24 that suggests that secondhand smoke potentially

25 harmful, this is a quality-of-life issue, and we

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2 suggest to you that all Philadelphians are
3 entitled to a basic, decent quality of life in
4 their surroundings and respect from one another
5 and for one another. With all the quality-of-life
6 issues facing Philadelphia, this may not be a
7 giant leap forward, but it is, we believe, a
8 forward step in the right direction.

9 Thank you, Madam Chair Councilman,
10 Nutter, and members of the committee and members
11 of the Council.

12 COUNCILWOMAN TASCO: Thank you very
13 much for your testimony.

14 Are there questions from members of the
15 committee?

16 Councilman DiCicco?

17 COUNCILMAN DICICCO: I just have a
18 question.

19 How is one who owns an apartment
20 building or an apartment complex made aware of --
21 a potential tenant made aware of the building's
22 smoking policy? Is there any mechanism for that?

23 MR. LAWRENCE: Certainly, but usually
24 in an apartment building, everybody has the
25 freedom to do what's legal inside their own

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2 apartment, so if they wish to smoke in the
3 apartment, of course, that's their right. But the
4 owner might announce the policy to all tenants in
5 the common areas. And the landlord's frequently
6 in contact with the tenants with the rent bills
7 and just makes that a policy and he sends it out
8 to all the tenants.

9 COUNCILMAN DICICCO: In the common
10 areas. But do you know any buildings that may
11 have prohibitions where there's no smoking in the
12 building at all?

13 MR. LAWRENCE: Yes. Where the building
14 is other than a leasehold, where you're not
15 renting the space to another tenant, where it is
16 occupied by a single company -- for example, Two
17 Liberty Place is occupied by CIGNA or Ace USA.
18 Those are all employees of SIGNA or Ace USA, and
19 the company's policy is that employees of shall
20 not smoke on the property, period. But the public
21 doesn't really have access to that building. It's
22 not really a public building. As you go into that
23 building, you'll see turnstiles, and you have to
24 present an access card to do business in that
25 building. So it's a private building.

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2 One Liberty, for example, the building
3 that I manage, is a public building. So you can
4 come in and visit your attorney or whoever you're
5 going to visit in that building. It's a little
6 bit different; we can't force the tenants in a
7 public building to, you know, to not smoke in
8 their own premises. That's really up to the
9 tenant.

10 COUNCILMAN DICICCO: So, I mean, if you
11 have a prohibition on smoking in a particular
12 building, you would expect that the tenants would
13 abide by that prohibition?

14 MR. LAWRENCE: Well, it takes some
15 policing.

16 COUNCILMAN DICICCO: I was going to --
17 that's my question. How do you enforce that? If
18 a law firm on the 40th floor -- I'm just using
19 Liberty One as the example, Liberty One. Let's
20 say the chairman of the board of the law firm is a
21 smoker and understands that there's no smoking
22 allowed in the building but he or she decides that
23 they're going to smoke anyway, what do you do
24 about that?

25 MR. LAWRENCE: Well, if they smoke in

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2 their premises and the company permits it, that's
3 their right to do that, but if they come out in
4 the hallway --

5 COUNCILMAN DICICCO: No, inside.
6 You're saying you can't enforce it inside.

7 MR. LAWRENCE: That's correct, sir.

8 COUNCILMAN DICICCO: So you actually
9 have situations where you have certain areas that
10 are restricted for smoking, but yet another areas
11 if the tenant decides they can smoke?

12 MR. LAWRENCE: Yes.

13 COUNCILMAN DICICCO: So you have both
14 going on simultaneously, within the same
15 structure.

16 MR. LAWRENCE: That can happen. It
17 depends really on the company's policy.

18 COUNCILMAN DICICCO: Okay. I --

19 MR. LAWRENCE: I would say the majority
20 of policy today by most companies is nonsmoking
21 within their premises.

22 COUNCILMAN DICICCO: So it's
23 conceivable that if someone was going to the 41st
24 floor, that when the elevator door opens on the
25 40th floor, assuming that the tenants of the 40th

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2 floor have a smoking policy, that you would inhale
3 or somehow be able to breathe in some of the smoke
4 or fumes that's coming out of the 40th floor; or,
5 for that matter, maybe the ventilation system
6 could be a system that interacts with each floor,
7 and there's no way of ensuring that the tenants on
8 the 41st floor would not be breathing in any of
9 the smoke that's coming out of the 40th floor.

10 MR. LAWRENCE: Well, there is. There
11 are certain provisions made by tenants who will
12 allow smoking, perhaps sometimes for their
13 clients.

14 COUNCILMAN DICICCO: I'm not speaking
15 of hallways. Again, I'm speaking in the office or
16 --

17 MR. LAWRENCE: That's correct, inside
18 the premises. So they will create a designated
19 smoking area, and that area will be exhausted
20 directly to the atmosphere. There will be extra
21 exhaust fans to that area. So the employees there
22 that do smoke can go into that area and smoke.

23 COUNCILMAN DICICCO: How do you
24 retrofit a building that is existing, and how do
25 you create these designated areas for smoking on

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2 the 40th floor if the previous tenants -- I mean,
3 you put up a building.

4 MR. LAWRENCE: Right.

5 COUNCILMAN DICICCO: And you have
6 ventilation systems installed. How do you then
7 come back later date and --

8 MR. LAWRENCE: Get the duct work
9 through?

10 COUNCILMAN DICICCO: Yeah.

11 MR. LAWRENCE: One of the things you
12 can utilize is the toilet exhaust fans.

13 COUNCILMAN DICICCO: The what?

14 MR. LAWRENCE: The toilet exhaust fans.
15 Every floor has a toilet room, a men's and women's
16 toilet room. They're all exhausted. You can
17 increase the ventilation rate for that floor,
18 bring in another duct work to that duct that runs
19 vertically through the building and exhaust the
20 floor through that mechanism.

21 COUNCILMAN DICICCO: Is that
22 expensive?

23 MR. LAWRENCE: Yes.

24 COUNCILMAN DICICCO: And who bears the
25 expense of that?

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2 MR. LAWRENCE: Well, ultimately, the
3 tenant bears the expense. It's the cost of the
4 tenant improvements to build the space; it's just
5 added in to that cost.

6 COUNCILMAN DICICCO: Okay, thank. You
7 nothing further.

8 Thank you, Madam Chair.

9 COUNCILWOMAN TASC0: Any further
10 questions?

11 (No further questions.)

12 COUNCILWOMAN TASC0: Thank you very
13 much.

14 Beverly McIntosh and Karen Kennedy.

15 (No response.)

16 COUNCILWOMAN TASC0: Beverly McIntosh
17 and Karen Kennedy.

18 (Not present).

19 COUNCILWOMAN TASC0: Mike Driscoll,
20 Greg Berman, Beverly Swanson, and Lance Silver.

21 (Witnesses come forward.)

22 MR. SILVER: Good afternoon.

23 COUNCILWOMAN TASC0: Good afternoon.

24 MR. SILVER: Seems that I'm here for
25 bad news all the time.

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2 I want to say that I have built, I own,
3 and I operate Katmandu, on Delaware Avenue.

4 COUNCILWOMAN TASC0: Identify yourself
5 for the record, please.

6 MR. SILVER: Lance Silver.

7 COUNCILWOMAN TASC0: All right, thank
8 you.

9 MR. SILVER: I've been here before,
10 numerous times, 30 years worth.

11 And being terse, I just think this is
12 another attempt to make it very difficult for us
13 to operate. We'd like to have a work-study
14 program, and I'm totally, completely against any
15 ban on smoking in any restaurant, bar, or anywhere
16 in the City of Philadelphia. I think adults,
17 being adults, have the right to choose to go to a
18 restaurant where they can smoke or they don't have
19 to smoke. If someone wants to open up a
20 restaurant where it's no smoking God, bless 'em,
21 let 'em do it.

22 But for us to sit here and have laws
23 passed that make it very difficult to do business,
24 as difficult as it is to do business in the City
25 at times, and to put more hurdles in our way is

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2 just a very bad anti-business policy, and
3 Philadelphia doesn't need any more anti-business
4 policies.

5 So we're all against it, and I'm very
6 much against it on the waterfront, and I speak
7 for everybody there.

8 COUNCILWOMAN TASC0: Thank you.

9 (Applause.)

10 COUNCILMAN DICICCO: Mr. Silver, you're
11 familiar with the legislation, obviously. There's
12 been some discussion -- and I'm not preempting the
13 sponsor of the bill, there has been some
14 discussion about the possibility of relaxing some
15 of the language in the legislation that would
16 allow for smoking possibly at the bar but not in
17 the dining room. How do you feel about that?

18 MR. SILVER: I think it's
19 preposterous. As you were bringing out in your
20 example, which I thought was wonderful, here I am
21 on the 39th floor smoking and somebody on the 41st
22 floor isn't smoking, all within the same confines
23 of a building.

24 Now, the BOMA people, I've built and
25 operated apartments for 30 years in the City, and

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2 I love the idea of having a segregated area to
3 smoke and a common area, but anyone can do what
4 they want to do in their own apartment. I mean,
5 you talk about hypocrisy, that's the penultimate
6 of hypocrisy.

7 I understand Councilman Nutter's
8 intentions and reasons to want to do things that
9 are good for the City and for the people of the
10 City. Maybe we should start with all the buses,
11 all the trucks, all the cars, all the other crap
12 that's in the air, and that would make it a lot
13 safer for everybody. So, you know, I'm trying to
14 answer your question. I don't know how to answer
15 it except that I'm totally against any kind of a
16 ban whatsoever on anything.

17 COUNCILMAN DICICCO: Thank you.

18 (Applause.)

19 COUNCILWOMAN TASCIO: Councilman Rizzo.

20 COUNCILMAN RIZZO: Mr. Silver? Where
21 did he go? Come back a minute.

22 MR. SILVER: Yes.

23 COUNCILMAN RIZZO: You probably have
24 made it as clear and to the point as anyone that
25 has approached that witness table, but just think

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2 about it for a second a little bit more. You've
3 heard all of this testimony about the effects of
4 secondhand smoke and you said it very clearly,
5 that people have an option to go someplace else if
6 they don't want to come in to your place.

7 Don't you think there's some middle
8 ground, though, where as a businessman, you might
9 want get some of the folks that don't smoke, too?

10 MR. SILVER: After ten years of doing
11 business in one of the most popular places in the
12 City of Philadelphia, I have over 300,000 people a
13 season come through my place in a period of 20 to
14 25 weeks, so I think I can speak with some
15 authority on this.

16 There are many areas and many
17 restaurants in the nation and in the world where
18 you can go to a place, smoke if you want to, smoke
19 a pipe, smoke a cigar. You know, out of the
20 United States and in Asian, if you don't smoke,
21 it's like you know, that's sacrilegious.

22 So the point is that I think people
23 should be given the option, being adults that we
24 are, unless Big Brother's going to regulate
25 everything in our lives, but at least give us the

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2 option of saying, "I won't go to that damn
3 restaurant anymore because they smoke too much."
4 And you know what? The guy that owns the
5 restaurant will get a message.

6 And if people want to go to a
7 restaurant where there's smoke or there's a
8 smoking area or a nonsmoking area, let the people
9 make up their minds up. Everybody here is over
10 21, everybody pays taxes -- too much, which we all
11 know about, from gross receipts to net receipts,
12 to the 10 percent, to everything. Enough's
13 enough.

14 You do this, and I assure you, there's
15 going to be a lot of places that are going to
16 close and are not going to be able to, you know,
17 to work. It's that simple.

18 And I think that people should be given
19 the option of going to a nonsmoking or a smoking
20 restaurant or an area that says, Here's a
21 nonsmoking area, as do they now, and here's a
22 nonsmoking area, as they do now.

23 I wonder how many restaurants does
24 Mr. Nutter go to and how many restaurants has he
25 gone to in his lifetime where he has the audacity

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2 to sit here and to, you know, promulgate some kind
3 of rule like this. Where?
4 COUNCILMAN RIZZO: Do you have an area
5 in your facility that's for nonsmokers?
6 MR. SILVER: Yes.
7 COUNCILMAN RIZZO: And that works out
8 without any problem?
9 MR. SILVER: There's -- we haven't had
10 a problem in ten years. Why would there all --
11 why would there all -- one of the best mayors we
12 had, I think, Wilson Goode, said, If it ain't
13 broke, don't fix it. And he said that to me
14 numerous times, if ain't broke, don't fix it.
15 So what are we doing? Aren't there
16 other things for us to do?
17 COUNCILMAN RIZZO: But what about your
18 employees that work there? We've heard this
19 before, that people, they need a job, they need an
20 income. So many times some coal miners went down
21 in the coal mines and, because they had to bring
22 home the bacon, subjected themselves to a very
23 tough atmosphere. Even though they knew it was
24 bad for them, in many cases, they went into those
25 mines, knowing that their fathers, their brothers

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2 before them died. They had a choice: go find
3 something else, but in many cases, there wasn't an
4 alternative.

5 What about your employees that are
6 there because they really need a job, they need
7 the money, and they'll do whatever it takes to
8 grab that paycheck and the gratuities associated
9 with it?

10 MR. SILVER: That's a good question. I
11 think there's two answers to that question.

12 I think, first and foremost, any
13 individual who has that serious of a health
14 problem should really not work or be anywhere near
15 a restaurant, you know, and should possibly walk
16 around with some type of control device that
17 would, you know, be adaptable to help them
18 breathe. So I think someone who is in that
19 position really is not restaurant- bar- or
20 nightclub-oriented.

21 And our employees -- I think most of
22 them either smoke or don't really care about it
23 because it, you know, doesn't bother them that
24 much.

25 COUNCILMAN RIZZO: You've been doing

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2 this for, you said, 30 years. And what if you had
3 a long-term employee that worked for you for 10,
4 15, 17 years, and all of a sudden, developed an
5 ailment. Would you just basically pat 'em on the
6 butt and say, Go find something else because you
7 can't --

8 MR. SILVER: Absolutely not. I have a
9 place for 'em. I'll put 'em in the kitchen, on
10 the line, and he can't smoke there, and he'll love
11 it, or I'll put 'em outside in a nonsmoking area.
12 I mean, there's places that find people who don't
13 want to smoke, there's places that find places for
14 them to work. It's that's simple.

15 COUNCILMAN RIZZO: I just wanted to --

16 MR. SILVER: Absolutely. We don't want
17 to force anybody to do anything they don't want to
18 do, and we don't want to be forced to do anything
19 that we don't want to do as an industry. This is
20 the most important industry the City has.

21 COUNCILMAN RIZZO: Thank you.

22 (Applause.)

23 COUNCILWOMAN TASCO: Councilwoman
24 Reynolds Brown.

25 COUNCILWOMAN BROWN: Good afternoon,

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2 Mr. Silver.

3 MR. SILVER: Good afternoon.

4 COUNCILWOMAN BROWN: You mentioned in
5 your remarks, and I was trying to follow you, that
6 you are interested in a work-study program. Did
7 you not say that? Could you elaborate on that?

8 MR. SILVER: I think Debbie Bat (ph.)
9 from our restaurant association has much more
10 information, is much more familiar with that than
11 I, but something like that would be more of a
12 pragmatic empirical type of a study or an
13 empirical type of a work order that would
14 basically take into consideration all of the
15 things that we've talked about in the industry and
16 get input from patrons and get input from other
17 people and put that together and then see what is
18 what.

19 COUNCILWOMAN BROWN: So are you open to
20 that?

21 MR. SILVER: I'm open to whatever our
22 association is open to. I personally am against
23 any ban whatsoever, and I know the association is
24 also.

25 And we're not trying to be, you know,

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2 bad citizens; we're just saying that in the
3 climate of doing business in the City, it's
4 difficult enough to get by and to do what we have
5 to do when we have so much in the way of taxes and
6 rules and regulations and piers falling into the
7 water and people getting shot and all of the other
8 garbage that goes on in a large urban environment,
9 that more invasive types of Bit Brother policies
10 directed at adults, directed at adults -- we are
11 adults, all of us. I don't want to know what you
12 do in your private life, you don't want to know
13 what I do, but we're all adults, and we do many
14 different strange things and wonderful things.

15 COUNCILWOMAN BROWN: Now, to follow up
16 on Councilman Rizzo's question and recognizing
17 that nothing is 100 percent and, hopefully,
18 everything will have movement and progress, and
19 also acknowledging your personal view, separate
20 from what's in front of us today, 'cause I agree
21 with you completely; there are a lot of other
22 pressing priorities, some might say. And,
23 obviously, there are differences on what those
24 priorities should be.

25 But given what's in front of us today

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2 and recognizing that there has been at least
3 articulated partially a willingness by all sides
4 to come to an amicable -- if that's possible --
5 agreement that everyone -- that moves us from
6 where we are, are you open to that? Setting your
7 personal view aside.

8 MR. SILVER: Personal view aside, the
9 only caveat I would say to that, and being
10 objective, is that let's assume for a moment you
11 passed a law. If any one of our restaurant
12 members or bar members or associate members or
13 nightclub members or anyone can basically ascribe
14 a drop in business as a direct result of that law
15 going into effect, I would say I'd be vehemently
16 opposed to it, as should everyone, because a law
17 should not be an economic punishment; it should be
18 something that would work in another way.

19 So I would agree with what you're
20 saying only if -- and I would believe our
21 association would agree to that -- that only if
22 there's no economic detriment or economic turndown
23 in any of our businesses, who cares, that's okay.
24 Because, again, adults are adults. We're talking
25 about business and we're talking about staying

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2 alive and we're talking about basically feeding
3 the school system and everybody here and paying
4 all the salaries, etc., with taxes.

5 So if we have a problem and we go out
6 of business and our volume goes down, you're going
7 to feel it.

8 COUNCILWOMAN BROWN: We all will.

9 MR. SILVER: Yeah, absolutely.

10 Did I answer your question?

11 COUNCILWOMAN BROWN: Yes. Thank you
12 very much.

13 MR. SILVER: You're welcome very much.

14 COUNCILWOMAN TASC0: Thank you very
15 much.

16 MR. SILVER: You're welcome.

17 (Applause.)

18 COUNCILWOMAN TASC0: Next.

19 Identify yourself for the record.

20 MR. BERMAN: Yes. Members of the
21 Council, my name is Rick Berman, and I am the
22 general counsel of the American Beverage
23 Institute. The Institute is a restaurant
24 organization, it's a nationwide organization, and
25 many of our member restaurants are either inside

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2 the City or outside, in the suburbs.

3 I mention that because it's -- it's
4 probably the most unusual position for me to be
5 in. I'm here to tell you our views on the smoking
6 ban as it's been proposed, but I am somewhat
7 conflicted because you'll note by the time I am
8 through testifying that we suspect that the
9 restaurants in the City will suffer, but some of
10 our members who are just outside the City line
11 will actually benefit from the smoking ban, and
12 this is based on experience that we've had around
13 the country. And so, again, I'm not here to
14 advocate as much as I am to share information with
15 you, and I hope that you'll give me the
16 opportunity to respond to some of your questions.

17 In short, these types of bans
18 essentially end up giving a Council or a county
19 government the opportunity to pick winners and
20 losers. There is not any doubt that business
21 drops off when these bans are put in place. We
22 did a study in California. The study was
23 conducted by KMPG, Peat Marwick. They took a base
24 of 7,000 establishments that were subject to the
25 California ban. They surveyed -- it was about

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2 7200 locations. They surveyed -- they sampled out
3 of that 7200. The margin of error was just over
4 5 percent, plus or minus.

5 And what we found was that after the
6 ban was put in place in California in January of
7 1998, actually 59 percent of the businesses
8 surveyed indicated a decrease in business, with a
9 26 percent average decrease in business. There
10 were some businesses that increased; 6 percent of
11 the businesses increased, and 30 percent indicated
12 no effect. But the great majority, 59 percent of
13 the businesses, indicated a 26 percent loss in
14 business. And I'm happy to submit the entire
15 study for members of the Council, if you would
16 like to have it.

17 There is another aspect of this that
18 I'd like to bring to your attention from the
19 standpoint of a nationwide organization, again,
20 with restaurant locations here in the City, and
21 that aspect is the view or the mentality of the
22 chain-restaurant operator. These folks are
23 basically balancing two things when they operate:
24 they're trying, like any other hospitality
25 company, to provide a good experience to their

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2 customers; and they're also, quite frankly, in
3 business to maximize shareholder value. Many of
4 these companies, in fact, I daresay, all of these
5 companies have experienced these bans.

6 There are people who will testify that
7 when you put these bans in place, business
8 actually increases. And as I said, you can find
9 some anecdotal situations where it does increase,
10 but you can bet that if these nationwide
11 businesses were finding that the result of the
12 ban, perhaps even the inadvertent result of the
13 ban, was to increase their businesses, they would
14 not be waiting for city councils to go ahead for
15 bans; they would be doing it themselves, and they
16 would be doing it because they have the selfish
17 objective to try and increase business traffic.

18 Today, in the restaurant industry, it
19 is nearly impossible to raise prices.
20 Productivity gains are very difficult to come by
21 in the service industry. And so you will find,
22 from Allen Greenspan to less are known economists,
23 indications that the only way to actually increase
24 their profitability is to increase their sales.
25 And, again, I want to stress to you that these are

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2 smart business people, and if they thought that a
3 ban on smokers was going to increase their sales,
4 they would be ahead of any city council.

5 I also would like to give you some
6 indication as to where we believe the situation is
7 in regard to secondhand smoke. I am not here as
8 an expert on secondhand smoke, and I will not cite
9 to you studies that we have done. And to the
10 degree that what I share with you is hearsay, then
11 I, you know, openly admit to that.

12 But I've been in several of these
13 council hearings around the country, and I have
14 found that respected witnesses, such as the
15 captain from the Surgeon General's Office, people
16 from the Lung Association, people from the Heart
17 Association, will continually cite a series of
18 studies that suggest that secondhand smoke, even
19 in relatively small amounts, is a significant
20 health risk. Most of these studies key off of the
21 1993 Environmental Protection Agency study, the
22 so-called EPA study.

23 Two years ago, the EPA study was thrown
24 out by a district court. It was thrown out by a
25 District Court judge who is no friend of the

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2 tobacco industry, and the District Court pointed
3 out, quite succinctly, that -- to put it in
4 layman's terms, the EPA had cooked the books.
5 Yet, in hearing after hearing, we continually find
6 that the EPA's study is cited as a reason for
7 these smoking bans. And subsequent studies that
8 come from the EPA study, we'll call it the progeny
9 of the EPA study, rely heavily on that study.

10 Now, I don't want to accuse the EPA of
11 being intellectually dishonest on this issue, but,
12 in fact, there is enormous momentum based on what
13 has become a politically correct movement rather
14 scientifically correct movement, and I would like
15 to share with you that there are subsequent
16 studies that have suggested that the secondhand
17 smoke issue is overstated, especially in the
18 restaurant industry.

19 Again, I'm not here to attest to its
20 validity, but a study came out in the March issue
21 of the Journal of Exposure Analysis and
22 Environmental Epidemiology, which is a peer
23 reviewed. The study was performed by scientists
24 at Oak Ridge, which is the laboratory run by the
25 Department of Energy, and they studied waiters and

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2 bartenders in the restaurant industry. The
3 authors indicated that the exposure level for
4 bartenders, waiters, and waitresses was one-sixth,
5 one-sixth of the allowable OSHA standard.

6 So this is relatively new research. I
7 am not here again to tell you that smoking is
8 harmful or it is not harmful, but I did want to
9 share with you the results of the research and
10 some of the criticism of some of the earlier
11 research.

12 At the end of the day, there are a lot
13 of reasons why people don't go to restaurant,
14 including the restaurants that I represent. Some
15 people don't like the level of music at Hard Rock
16 Cafe, which is a part of our group. Some people
17 don't like the prices in some of our pricier
18 restaurant members. Some people don't like the
19 fact that kids are allowed, or that kids are not
20 allowed, and soon.

21 And today, as you have heard before me,
22 consumers also have choices as to whether or not
23 to go to a restaurant that they find to be
24 environmentally friendly, depending upon their
25 standard, or environmentally unfriendly. And it's

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2 that choice which I think is most at issue here.
3 We're hopeful that you will make a decision that
4 favors choice and one that favors the consumers
5 and, quite frankly, doesn't prejudice the City
6 restaurants to the benefit of the restaurants
7 outside the City.

8 I'd be happy to answer any questions.

9 COUNCILWOMAN TASCO: Thank you.

10 Councilman Nutter?

11 COUNCILMAN NUTTER: Thank you.

12 Good afternoon, Mr. Berman. I
13 apologize, I was away from my chair when you came
14 up.

15 MR. BERMAN: Well, that might mean I'll
16 have an easier time of it.

17 COUNCILMAN NUTTER: I wouldn't
18 necessarily count on it.

19 Now, you represent the American
20 Beverage Institute; is that correct?

21 MR. BERMAN: That's correct.

22 COUNCILMAN NUTTER: Okay. Now, that
23 organization is based where?

24 MR. BERMAN: Washington, DC.

25 COUNCILMAN NUTTER: Okay. And you were

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2 talking about the studies out of the Oak Ridge
3 National Laboratory? Did I hear you talk about
4 that earlier?

5 MR. BERMAN: Correct.

6 COUNCILMAN NUTTER: Okay. And who
7 performed these studies?

8 MR. BERMAN: Well, the studies were
9 performed by -- I will give you the names of the
10 authors, if you would like, If you would just give
11 me a moment here.

12 COUNCILMAN NUTTER: Would that have
13 been Roger Jenkins?

14 MR. BERMAN: Jenkins, Mazurnek (ph.),
15 Dindell (ph.), and Kounz (ph.).

16 COUNCILMAN NUTTER: Roger Jenkins, he's
17 a chemist, right?

18 MR. BERMAN: These are people who are
19 in the Chemical and Analytical Science Division
20 and the Computer Science and Mathematics Division
21 of the Oak Ridge Lab.

22 COUNCILMAN NUTTER: I'm sorry. What's
23 their backgrounds again?

24 MR. BERMAN: Computer science and
25 chemistry.

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2 COUNCILMAN NUTTER: Computer science
3 and chemistry.

4 MR. BERMAN: At least those are the
5 Chemical and Analytical Sciences Division and
6 Computer Science and Mathematics Division.

7 COUNCILMAN NUTTER: So they're not
8 necessarily medical doctors?

9 MR. BERMAN: I don't believe so.

10 COUNCILMAN NUTTER: Okay. Were you
11 here when the senior advisor to the Surgeon
12 General of the United States of America was here?

13 MR. BERMAN: Yes, correct.

14 The study that I was referring to --
15 and, again, I'm happy to give you copies of this
16 study. All this study did -- and, again, it was a
17 peer review study. All the study did was capture,
18 through mechanical devices, the amount of smoke
19 people are exposed to in normal working
20 environments in restaurants and other areas.

21 COUNCILMAN NUTTER: Right, I
22 understand. Now, are you a scientist?

23 MR. BERMAN: No. I'm an attorney.

24 COUNCILMAN NUTTER: You're an attorney,
25 okay.

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2 Now, Mr. Jenkins, the chemist at the
3 Oak Ridge National Laboratory, do you know if he's
4 done any work with the tobacco companies?

5 MR. BERMAN: I know he's testify for
6 RJR about secondhand smoke.

7 COUNCILMAN NUTTER: Okay. And didn't
8 he attempt to testify in the flight attendants'
9 class action lawsuit?

10 MR. BERMAN: I -- I have seen him
11 criticized for -- for testifying as an expert
12 witness.

13 COUNCILMAN NUTTER: Okay. Actually,
14 his testimony was disallowed by the judge in that
15 case; wasn't that true?

16 MR. BERMAN: I really don't know. I --
17 I don't follow these people very well. In fact, I
18 was only made aware of this study fairly recently.

19 COUNCILMAN NUTTER: Oh, okay. Now, I
20 mean, I assume that you know the study well since
21 you've presented it as evidence that secondhand
22 smoke is not a danger to people.

23 MR. BERMAN: No, I didn't -- I didn't
24 say that. I said I only came here to share the
25 information that is, you know, generally available

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2 in the public domain.

3 COUNCILMAN NUTTER: Right.

4 MR. BERMAN; for instance, I didn't
5 mention the World Health Organization study, which
6 also indicated that secondhand smoke was an
7 overstated problem.

8 COUNCILMAN NUTTER: Yeah, I think
9 there's been a fairly good media campaign around
10 the World Health study report, which I do have and
11 which I've read, and I have their press release
12 disputing the reports of the British press around
13 their report, but we don't have to have that
14 argument today.

15 Let me just put on the record that Dade
16 County Circuit Court Judge Robert P. Kay barred
17 Mr. Jenkins and his study at Oak Ridge in the
18 Florida flight attendants' lawsuit, which, you
19 probably know, subsequently was settled by the
20 tobacco companies for \$300 million in favor of the
21 flight attendants, as well as \$49 million in the
22 attorneys' fees and the establishment of a
23 foundation by the tobacco companies to study the
24 issue of secondhand smoke and take the
25 responsibility in any future lawsuits to prove

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2 that secondhand smoke had not caused injury to
3 those people.

4 I mean, I think it's fairly clear from
5 all of the information that is out in the public
6 domain that Mr. Jenkins does work for the tobacco
7 companies, has testified for the tobacco
8 companies, and is clearly a witness on behalf of
9 the tobacco companies, and that was one of the
10 reasons why his testimony was not allowed in that
11 particular case, as it was considered irrelevant.

12 MR. BERMAN: Well, again, I'm not here
13 to defend Mr. Jenkins or anyone else, but --

14 COUNCILMAN NUTTER: Well, I mean you
15 raised Mr. Jenkins; I didn't raise Mr. Jenkins.

16 MR. BERMAN: Yes, but I was only
17 expressing the fact that this is a peer-reviewed
18 study that was reviewed by other scientists and
19 published in a credible medical journal.

20 COUNCILMAN NUTTER: Sure, right, okay.
21 Well, I know the scientists at the tobacco
22 companies also told us that smoking wasn't bad for
23 us, either, I think.

24 MR. BERMAN: And I'm not here to defend
25 that; I'm only sharing the information.

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2 COUNCILMAN NUTTER: Okay. Let's talk
3 about your report. This is the California
4 report. Now, is it my understanding that the
5 document was conducted or the element was
6 conducted between March 3rd and March 6th of
7 1998?

8 MR. BERMAN: It was conducted in early
9 1998, yes.

10 COUNCILMAN NUTTER: All right, and that
11 the ban in California went into effect on January
12 1, 1998?

13 MR. BERMAN: Correct.

14 COUNCILMAN NUTTER: Okay. And the
15 study, was that an examination of tax receipts or
16 revenues by the bar owners?

17 MR. BERMAN: No. This was -- this was
18 a study done by Peat Marwick interviewing people
19 who were operating restaurants and asking them
20 what the impact had been on their businesses.

21 COUNCILMAN NUTTER: Now, are you sure
22 that this study was conducted by Peat Marwick, or
23 isn't it true that the questions were presented to
24 Peat Marwick for them to look at and approve the
25 questions?

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2 MR. BERMAN: Peat Marwick took the
3 questions, they actually -- they took what
4 questions we wanted to have answered. Obviously,
5 they wouldn't know what questions we wanted to
6 know to have answered.

7 COUNCILMAN NUTTER: All right.

8 MR. BERMAN: We told them what
9 questions we would like to have answered. They
10 then took the questions and put them in a form
11 that they felt was acceptable for a survey, and
12 then they went ahead with it.

13 COUNCILMAN NUTTER: Did Peat Marwick
14 actually conduct the survey?

15 MR. BERMAN: Yes, absolutely.

16 COUNCILMAN NUTTER: Or did you have
17 someone else conduct it?

18 MR. BERMAN: I had absolutely nothing
19 to do with it; I turned it all over to them.

20 COUNCILMAN NUTTER: I understand. Now,
21 you said that this was a phone survey, or was it a
22 review of actual revenues?

23 MR. BERMAN: It was a telephone survey
24 of a sample of the 7,000 restaurants, or bars and
25 taverns.

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2 COUNCILMAN NUTTER: Okay. And that was
3 within two months of the time that the legislation
4 went into effect?

5 MR. BERMAN: Correct.

6 COUNCILMAN NUTTER: Did they compare
7 the same time period for the previous year in the
8 survey?

9 MR. BERMAN: No. They asked people
10 what the impact had been since the ban, and these
11 were the results that they had gotten.

12 COUNCILMAN NUTTER: In a two-month
13 period of time.

14 MR. BERMAN: (Nods.)

15 COUNCILMAN NUTTER: Do you know Gregory
16 Oliva?

17 MR. BERMAN: I'm sorry, sir?

18 COUNCILMAN NUTTER: Do you know Gregory
19 Oliva?

20 MR. BERMAN: Oliver?

21 COUNCILMAN NUTTER: Oliva, O-L-I-V-A?

22 MR. BERMAN: I don't recognize the
23 name.

24 COUNCILMAN NUTTER: Gregory Oliva is
25 the associate health program advisor of the local

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2 program unit of the tobacco control section for
3 the Department of Health Services, in Sacramento,
4 California. Part of their responsibility is to
5 monitor sales figures from bars and restaurants.
6 Their survey shows that in 1999, the first-quarter
7 sales, an actual review of receipts, as compared
8 to the same quarter in 1998, which is the time
9 period that you were doing the survey:

10 In eating places with no alcoholic
11 beverages, the percentage change in the taxable
12 sales was a positive 7.2 percent;

13 In eating places with beer and wine,
14 for that same time period, there was a positive
15 net change of 9.1 percent;

16 For eating places with all types of
17 liquor served, there was a positive change in
18 taxable sales, a comparison between '98 and '99,
19 of 6.3 percent;

20 And that overall, for all eating and
21 drinking establishments, the percentage change was
22 7.4 percent.

23 Now, how do you think that compares
24 with your survey results?

25 MR. BERMAN: Well, firstly, you have --

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2 you have to understand that they have thrown in --
3 some of these numbers -- we've seen this before --
4 you have all the fast-food companies that are in
5 these --

6 COUNCILMAN NUTTER: I'm sorry?

7 MR. BERMAN: You have all the fast-food
8 companies in these eating and drinking places.

9 Secondly --

10 COUNCILMAN NUTTER: Are there fast-food
11 companies in the beer and wine category?

12 MR. BERMAN: Well, actually, Denny's in
13 California is one of the bigger bars in
14 California, but you will find in your non-alcohol
15 --

16 COUNCILMAN NUTTER: You think Denny's
17 is having such a tremendous impact on the market
18 that they are skewing it?

19 MR. BERMAN: No, no. I'm -- I'm only
20 suggesting to you that those are not truly --
21 those numbers are not crafted to look at the
22 people who were actually impacted.

23 Secondly, when you look at the
24 restaurants --

25 COUNCILMAN NUTTER: Have you seen the

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2 study?

3 MR. BERMAN: Yes -- I mean I've seen
4 similar.

5 What you also have to remember is that
6 restaurants had the ban in place two years
7 before. And so when you lump these restaurants in
8 there, if restaurants are having increased
9 business because Silicon Valley is doing well and
10 everybody's income is going up, a restaurant whose
11 sales are going up and who is not impacted by the
12 ban is distorting the numbers that you have. And
13 all restaurants across the country --

14 COUNCILMAN NUTTER: I thought all the
15 restaurants were impacted by it.

16 MR. BERMAN: No. It happened in two
17 stages.

18 COUNCILMAN NUTTER: Right, I know.

19 MR. BERMAN: So this survey came out
20 after the second -- after the second ban, if you
21 will.

22 COUNCILMAN NUTTER: That was on the
23 bars.

24 MR. BERMAN: The second stage of the
25 ban, right, the bars and taverns.

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2 So what he's picking up there are lots
3 of restaurants whose sales were increasing as the
4 economy is-- I mean, sales are up across the
5 country with -- having no regard to anything else,
6 and all those numbers are --

7 COUNCILMAN NUTTER: I understand what
8 you're saying. I'm just trying to understand the
9 difference between the two surveys done at the
10 same exact period of time, and one is showing on
11 the tax receipts side the numbers up, while the
12 impressions of telephone-survey participant is
13 saying that they're down. I'm just trying to
14 understand the --

15 MR. BERMAN: I don't mean to be
16 argumentative, but if I can -- I represent a lot
17 of companies in California where the ban went into
18 effect. And as their sales are going up because
19 the economy is increased, they are masking the
20 sales that are dropping because of the smoking
21 ban. You've got huge numbers of more restaurants
22 -- there are more restaurants in California than
23 there are bars and taverns, and so most of the
24 people in the sample weren't affected by the ban
25 when that survey was made, and so it distorts the

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2 numbers dramatically.

3 COUNCILMAN NUTTER: All right, okay.

4 Lastly, in this particular area, I
5 think your own survey, though does show, though,
6 that only 44.8 percent of the connected
7 establishments reported a decrease in business.
8 And that's, I'm assuming, a sheer indication that
9 those particular establishments were nowhere near
10 as affected by the, quote/unquote, stand-alones,
11 and you may or may nobody aware that what you may
12 call a stand-alone, we probably call more of a
13 bar, which many of them are exempt from this
14 particular provision.

15 MR. BERMAN: I'm not certain I caught
16 what you said. I did say earlier that we had 36,
17 37 percent who said either no effect or an
18 increase in business.

19 COUNCILMAN NUTTER: How do you explain
20 that?

21 MR. BERMAN: Well, I think that there
22 are lots of restaurants that are members of mine
23 who have, because of their customer base, decided
24 to go smoke-free because they think that's what
25 the public in their particular area wants, and

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2 these people probably had some similar effect,
3 even though they didn't know they would get it.

4 COUNCILMAN NUTTER: Okay, thank you.

5 MR. BERMAN: Thank you.

6 COUNCILMAN NUTTER: I appreciate it.

7 COUNCILWOMAN TASC0: Are there any
8 further questions?

9 (No further questions.)

10 COUNCILWOMAN TASC0: Thank you very
11 much.

12 MR. BERMAN: Thank you.

13 COUNCILWOMAN TASC0: Mr. Driscoll?

14 MR. DRISCOLL: Please allow me to
15 extend my gratitude to this committee for allowing
16 the Philadelphia Hospitality and Business Alliance
17 this opportunity to relay our up-to-the-minute
18 concerns about Council Bill 314.

19 My name is Mike Driscoll, and I am the
20 Chairman of the Alliance Executive Committee. The
21 Alliance represents the largest industry in
22 Philadelphia. That industry is the hospitality
23 industry. With over 400 business-establishment
24 members, the Alliance represents both large and
25 small businesses, taverns, restaurants, hotels,

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2 purveyors, merchants, distributors, newsstands
3 throughout this city.

4 The Alliance strongly opposes Bill 314,
5 even as amended by City Council on March 24, 2000
6 because of its negative impact on the economic
7 viability of the City of Philadelphia and the
8 thousands of businesses in the hospitality
9 industry.

10 First, the Alliance views Council Bill
11 314 as a major piece of legislation because of its
12 wide-range impact on Philadelphia beyond the
13 simple issue of smoking. Because this is a major
14 wide impact and piece of legislation, we, the
15 business community, do not understand the urgency
16 at which this committee is moving Council Bill 314
17 through the legislative process. As the impact of
18 this legislation on the business community and the
19 economy of Philadelphia is reaching an extreme, it
20 is the Alliance position that a reasonable method
21 of proceeding with this legislation is through the
22 establishment of a public-private sector working
23 committee on smoking.

24 A working committee is needed because
25 the Alliance firmly believes that Council Bill 314

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2 is anti-freedom of choice. The bill limits the
3 freedom of choice of both establishment owners and
4 patrons. Council Bill 314 is anti-free market.
5 The marketplace should dictate what the market
6 will tolerate and not an artificial government
7 decree. This means marketplace forces, which
8 allows the hospitality establishment owners and
9 operators a choice, should be the determination on
10 which a hospitality establishment decides its
11 environment.

12 Council Bill 314 is discriminatory.
13 The very fabric of the hospitality industry is the
14 notion of accommodation. This means that all
15 segments of the marketplace are provided for,
16 including smoking as well as nonsmoking patrons.
17 Discriminating directives and regulations such as
18 Council Bill 314 contradict the policy of
19 inclusion and accommodation, which is essential to
20 our industry.

21 Council Bill 314 is unnecessary and
22 extreme. As business people, the hospital
23 industry has long been concerned about its clients
24 and employees. Being concerned and responsive to
25 concerns is what the hospitality industry is all

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2 about. As a result, the Philadelphia hospitality
3 market has long required that establishments cater
4 to both smoking and nonsmoking patrons. In
5 Philadelphia, there are establishments where the
6 dining area is smoke-free, where smoking is
7 allowed only in the lounge or bar, or where the
8 entire restaurant -- like Bridges in Fairmount --
9 is smoke-free.

10 Again, the important point to keep in
11 mind is that these accommodations were made not
12 because of a government-mandated regulation but,
13 rather, on the basis of a business choice and
14 marketplace forces in the hospitality industry.

15 Council Bill 314 is unworkable and will
16 result in an economic disaster. If the ordinance
17 were to be enacted based on the experiences of
18 those regions which have enacted smoking bans, the
19 economy of the City will be severely impacted.
20 Yesterday, the Alliance distributed to the Council
21 a number of studies outlining the negative impact
22 that such bans has had on a number of cities,
23 including the State of California. We, the
24 business community, encourage you to take time and
25 review this material. The bottom line is, smoking

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2 bans are bad economic policy.

3 Council Bill 314 will impact
4 Philadelphia's fragile socioeconomic foundation.
5 Philadelphia's vast multi-ethnic, multicultural
6 melting pot represents all that is unique and
7 great about our nation, its government, and our
8 society. Tolerance of diversity, respect for
9 others, and compromise is a method by which
10 Philadelphia is able to maintain tranquility among
11 such a diverse population.

12 While the intentions of this
13 legislation may have been good at the outset, it
14 is, at best, intolerant and discriminatory and
15 will have the opposite effect of its -- the
16 opposite of its intended effect, with the result
17 of causing more economic and social problems than
18 it resolves.

19 As stated in a number of conversations
20 and communications with Council, this alliance
21 clearly recognizes the need to work with Council
22 to bring about reasonable solutions that safeguard
23 the health and safety of those living in or
24 visiting Philadelphia.

25 Reasonableness requires that smoking

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2 legislation be evenhanded, reasonableness requires
3 that smoking legislation be fair to the
4 hospitality industry, the hospital marketplace,
5 and its customers;

6 Reasonableness requires that smoking
7 legislation be at least market-driven and at least
8 market-sensitive;

9 Reasonableness requires that smoking
10 legislation not be arbitrary;

11 Reasonableness requires that smoking
12 legislation establishes solutions that make good
13 business sense and are enforceable;

14 Reasonableness requires that smoking
15 legislation be tolerant and inclusive but not
16 discriminatory.

17 The Alliance urges this committee and
18 Council to commit its good offices towards working
19 together with the business community of
20 Philadelphia to find a reasonable compromise on
21 the smoking issue as it relates to the hospitality
22 and restaurant industries and to the health and
23 welfare of residents and visitors to our great
24 city. The Alliance is confident that we can reach
25 agreements on the issue of assigns confident that

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2 reach on smoking in public places and that the
3 result will be reasonable legislation that
4 promotes a healthy, clean, environmentally-safe
5 hospitality industry in Philadelphia.

6 The Alliance is again asking that
7 Council Bill 314, which is now before this
8 committee, be withdrawn and that a public-private
9 sector working committee on smoking be created
10 that has as its objective the development of an
11 indoor public smoking policy which will have
12 broad-based support.

13 The proposed Council Bill 314, as
14 amended on May 24, 2000, should be the starting
15 point of the working committee. The Alliance
16 respectfully asks that we set at the earliest
17 possible time a meeting whereby the logistics and
18 details of the working committee may be
19 established with the goals being the creation of
20 consensus legislation that will have the support
21 of public and private sectors and the City's
22 health community.

23 In closing, on behalf of the over 400
24 business-establishment members of this alliance, I
25 would like to thank the Council and this committee

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2 for accommodating our group and for reaching out
3 over the last week to understand our position and
4 concerns. Be assured that the Alliance is eager
5 to work with this committee and the Council in the
6 weeks ahead.

7 Thank you.

8 (Applause.)

9 COUNCILWOMAN TASCO: Are there any
10 questions from members of the committee?

11 Councilman Nutter?

12 COUNCILMAN NUTTER: Thank you, Madam
13 Chair.

14 Good afternoon, Mr. Driscoll. Thank
15 you very much for your testimony and your
16 continued relationship as the general
17 representative of the Alliance, but certainly
18 there are many other people involved. I thought
19 that the meeting yesterday morning was a good
20 meeting that we had, yourself and Miss Bat and a
21 number of other people who participated in that.
22 And I wanted to do a couple things. One, just ask
23 a couple questions; and, two, get some reaction
24 and some response to other ideas that might be
25 helpful in this particular process.

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2 One of the things that I have wondered
3 for sometime is, in any of the restaurants that
4 you are familiar with, do you -- do they normally
5 allow any smoking in the kitchen?

6 MR. DRISCOLL: I can speak to our
7 restaurant. We do not allow that. I can't speak
8 for the others.

9 COUNCILMAN NUTTER: Why is that?

10 MR. DRISCOLL: We don't allow a lot of
11 things in a kitchen. Anything that could
12 potentially be a contaminant to food in the
13 preparatory phase, you know, we take what I would
14 call extreme precautions that might not ordinarily
15 be taken in other areas of our restaurant.

16 COUNCILMAN NUTTER: Okay. And is that
17 then different when the food is out in the -- what
18 do we call it? -- I guess the eating phase?

19 MR. DRISCOLL: A bit.

20 COUNCILMAN NUTTER: Okay. And how is
21 that?

22 MR. DRISCOLL: Well, there's no
23 smoking. There would be -- we require the chef to
24 wear certain clothing and we require --

25 COUNCILMAN NUTTER: No. My question

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2 was, the food is now moved out in the kitchen --
3 I'm glad there's no smoking in the kitchen. You
4 expressed that you don't allow that because you're
5 worried that the smoke, whether it's the actual
6 smoke or, I guess, particulates or ash might
7 actually get into the food. I assume that that's
8 the concern. You said it would interfere with the
9 --

10 MR. DRISCOLL: Any of the above.

11 COUNCILMAN NUTTER: Okay. And then I
12 said, but it's different when out in the eating
13 phase, when it's now out of the kitchen and out
14 where the diner's going to enjoy it?

15 MR. DRISCOLL: To a certain level. For
16 instance, we wouldn't have a waitress with a
17 cigarette in her hand delivering the food for fear
18 of -- first of all, not knowing what the customers
19 at that particular table preference might be, but
20 also, as you indicated, perhaps a cigarette butt
21 or an ash would fall into a shepherd's pie at
22 Finnegan's Wake.

23 COUNCILMAN NUTTER: And the problem
24 with that is. . . ?

25 I mean, suppose the person was a

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2 smoker; I mean, would it make any difference?

3 MR. DRISCOLL: If our employee was a
4 smoker?

5 COUNCILMAN NUTTER: No, the recipient
6 of the meals, suppose they were a smoker. I mean,
7 do you think they would be concerned about
8 anything getting in their food as well, even if
9 the person is a smoker?

10 MR. DRISCOLL: Perhaps.

11 COUNCILMAN NUTTER: All right. And
12 what about cigars and pipes in the establishment;
13 do you allow that?

14 MR. DRISCOLL: Do we allow it?

15 COUNCILMAN NUTTER: Yes, for patrons.

16 MR. DRISCOLL: Yes, we do.

17 COUNCILMAN NUTTER: In both?

18 MR. DRISCOLL: In designated areas.

19 COUNCILMAN NUTTER: Okay, all right.
20 What about many of the other restaurants; do they
21 allow cigars and pipes?

22 MR. DRISCOLL: Some do, some do not.

23 COUNCILMAN NUTTER: Do you know of any
24 particular reason?

25 MR. DRISCOLL: It's the choice by the

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2 owner and/or operator as to what the marketplace
3 would tolerate or accept.

4 COUNCILMAN NUTTER: Mm-hmm. So even in
5 some places where they allow smoking, either cigar
6 or pipe smoke, is potentially even more offensive?
7 Is that -- do you think that's the problem?

8 MR. DRISCOLL: I think it's fair to say
9 that some view it as more offensive.

10 COUNCILMAN NUTTER: Than even
11 cigarettes.

12 MR. DRISCOLL: So, therefore, they may
13 have smoking sections, but it may be -- they may
14 have more extreme policies and procedures within
15 certain restaurants.

16 COUNCILMAN NUTTER: Okay. Tell me a
17 little bit about, based on your experience as the
18 representative of the Alliance, what the view or
19 position of the restaurant community might be
20 toward a prohibition on smoking restricted to the
21 dining area.

22 MR. DRISCOLL: Well, I think the -- the
23 hospitality industry is prepared to analyze all
24 aspects of your legislation. It really is asking
25 for time to analyze how it may impact their

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2 individual establishments.

3 COUNCILMAN NUTTER: I understand that
4 but, I mean, you must have some perspective just
5 on that fairly simple, somewhat narrow question.
6 I mean, what's the -- you represent an
7 organization; I assume you have some level of
8 knowledge about what many people may do or what
9 some segments of the community may do in terms of
10 the operation of their establishments. Do most
11 allow smoking in the dining area? do most not
12 allow smoking in the dining area? Is it 50/50?

13 MR. DRISCOLL: A significant number do
14 not allow it in the dining area.

15 COUNCILMAN NUTTER: What would you
16 consider --

17 MR. DRISCOLL: I don't know what the
18 percentage is.

19 COUNCILMAN NUTTER: What would you
20 consider significant?

21 MR. DRISCOLL: 40 percent or more.

22 COUNCILMAN NUTTER: 40 percent or more
23 don't allow it.

24 MR. DRISCOLL: In the dining areas.

25 COUNCILMAN NUTTER: Smoking in the

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2 dining areas.

3 MR. DRISCOLL: And I would say that a
4 higher majority would have designated smoking
5 areas within the dining area.

6 COUNCILMAN NUTTER: What would be your
7 reaction to any proposal that said you could
8 continue smoking at the bar, if it's kind of a
9 classic bar -- a restaurant-bar establishment,
10 where the place is really a restaurant but they
11 have a bar, it's all on the same premises. What
12 would be your reaction to any proposal that said
13 you could have smoking still at the bar but no
14 smoking in the dining area?

15 MR. DRISCOLL: We would look to our
16 members to see how that might affect an individual
17 member. That may be -- I think, generally
18 speaking, that would make some sense, but in
19 practical -- in a practical sense, whether or not
20 that can be done would have to be looked at.

21 COUNCILMAN NUTTER: I didn't completely
22 understand you.

23 MR. DRISCOLL: Repeat the question.

24 COUNCILMAN NUTTER: The question was,
25 as a representative of the industry, what do you

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2 think the general reaction would be to a proposal
3 that there would be no smoking in the dining area,
4 and smoking would still be allowed at the bar or
5 in the bar area? In most places, those are
6 generally two somewhat distinct and separate
7 rooms.

8 MR. DRISCOLL: Generally, it would be
9 met with some acceptance. And we would have to
10 define -- when you say "bar area," I'm assuming
11 you're including some tables in that area, just
12 not --

13 COUNCILMAN NUTTER: I mean, you've got
14 a bar, you've got bar stools, there might be an
15 aisle, there might be some tables across from that
16 area.

17 MR. DRISCOLL: Right.

18 COUNCILMAN NUTTER: But for most
19 places, I mean, the bar is usually a relatively
20 defined area, and then the dining area is usually
21 another relatively defined area.

22 MR. DRISCOLL: Generally so.

23 COUNCILMAN NUTTER: Is that correct?

24 MR. DRISCOLL: Generally so.

25 COUNCILMAN NUTTER: Okay. And you made

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2 mention of the work group, which, again, I
3 certainly believe is a good idea, and I would
4 expect that that kind of group would be headed up
5 probably by our Health Commissioner and other
6 agencies or departments, boards or commissions of
7 the government as well as representatives of
8 restaurant and hospitality industry, and then
9 there's the American Society of Heating and
10 Refrigeration and Air-conditioning, engineers, and
11 the EPA and OSHA and a number of other people who
12 are qualified in the area of mechanical
13 engineering and ventilation.

14 Do you think that that would be a good
15 combination to try to put together for this?

16 MR. DRISCOLL: I think an equal number
17 of selected members by each side would be fair.

18 COUNCILMAN NUTTER: What do you think
19 is a reasonable amount of time for that group of
20 people to seriously and legitimately work together
21 to try to come up with a proposal on how to deal
22 with this going forward?

23 MR. DRISCOLL: I'm prepared to speak on
24 the Alliance. We're prepared to go to work
25 immediately. How long that would take is a

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2 difficult proposition. Certainly months; I don't
3 think years.

4 COUNCILMAN NUTTER: All right, that
5 narrows it down to some extent. I mean, I'm glad
6 you didn't say "forever." Three, four, five
7 months do you think it would take for people
8 seriously working and reading and studying and
9 taking information?

10 MR. DRISCOLL: Tomorrow's June 1st so
11 the year is already half over, so I would say till
12 the end of the year.

13 COUNCILMAN NUTTER: And we had some
14 discussion. There are various proposals out --
15 whether it's in the ventilation area, you know the
16 deal has been amended to deal with the creation of
17 a smoking area or a smoking lounge, which would be
18 a designated area specifically for smoking. I
19 recognize that that particular proposal may help
20 some in the industry; it may not help others. But
21 it would seem to me that that kind of proposal, if
22 people agree that it's helpful to some probably
23 would need some phase-in time period or some
24 amount of time if someone wanted to pursue that.
25 I mean, you have to get building permits, you have

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2 to start, you know, some work if they decide to go
3 that particular route.

4 So we should probably try to establish
5 some time parameters within which you would know
6 there could be a starting point and an ending
7 point to some effort to respond to that particular
8 provision?

9 MR. DRISCOLL: I think that would be
10 reasonable.

11 COUNCILMAN NUTTER: Okay. I think in
12 our conversation, either yesterday or in the
13 previous conversation, I raised the issue of,
14 given the health issues that have been raised, I
15 think that there could be a legitimate discussion,
16 if not argument, that if we are asking people from
17 a public health perspective to possibly make some
18 improvements to improve air quality and overall
19 indoor air quality in their establishment, as we
20 have assisted other businesses with security
21 rebate programs and a wide variety of other
22 programs and policies, what do you think the
23 reaction would be to a discussion around possible
24 assistance from the City to help people if they
25 want to pursue those kind of improvements to their

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2 establishment?

3 MR. DRISCOLL: I think it would be
4 welcome, Councilman.

5 COUNCILWOMAN BROWN: What was the
6 answer to that?

7 COUNCILMAN NUTTER: Councilwoman
8 Reynolds Brown didn't hear your answer to that
9 question.

10 MR. DRISCOLL: I think it would be
11 welcome.

12 COUNCILMAN NUTTER: Okay. If there
13 were a study group -- maybe this will be the last
14 question for you. If there were a study group, we
15 would expect that the group, I guess, would come
16 up with a report or a set of recommendations and,
17 more than likely, either to the Council, full
18 Council, or to this committee, to the Chair.
19 Would it be your expectation that upon completion
20 of the study group's work that some action could
21 or should be taken by Council to further address
22 this particular issue?

23 MR. DRISCOLL: I think that would be
24 the conclusion, a logical conclusion.

25 COUNCILMAN NUTTER: Okay. And with

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2 regard to the smoking-at-the-bar issue --

3 MR. DRISCOLL: Although, Councilman, I
4 do think that this committee -- and I don't want
5 to give this committee more work, but secondhand
6 smoke within a facility is one aspect, and we
7 ought to narrow it so we can get something
8 accomplished, but indoor air quality is a larger
9 issue.

10 COUNCILMAN NUTTER: Sure.

11 MR. DRISCOLL: For instance, the
12 Council should know that many of our restaurants
13 have voluntarily put in smoke-eaters, filters,
14 different kind of air processing, and it's not
15 simply because of smoking issues, but because --
16 to purify the air, get more oxygen. And there's a
17 movement afoot in a lot of industries right now to
18 create better work environments by increased
19 oxygen, aromatic scents, that sort of thing.
20 Anything that could be added to this discussion
21 that would improve air quality in the restaurants
22 I think would be welcomed as well.

23 COUNCILMAN NUTTER: So, lastly -- I
24 mean, in kind of wrapping up our discussion, is it
25 your feeling that if there were set time

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2 parameters for the study group, any final action
3 to be taken on this particular issue, as well as a
4 timeframe established around when people would
5 have to be in full compliance with what, in
6 essence, is an effort to establish some minimal
7 standards for indoor air quality, if that was some
8 reasonable amount of time of a year, a year and a
9 half, I mean, do you think that that's workable
10 and realistic and respectful to people who are
11 trying to work and function in a constantly
12 changing business environment?

13 MR. DRISCOLL: I think that would be a
14 quick -- I think we'll get a better understanding
15 real quickly with that work study of what would be
16 reasonable there.

17 See, one thing I just want to make the
18 Council aware of, and maybe you already are, the
19 reason there's a lot of sensitivity here is, you
20 see a lot of successful restaurant owners, and my
21 hat's off to them because I've only been in this
22 business going on 4 years, and I understand the
23 24/7 effort that goes into making a successful
24 restaurant. But we see these names that have been
25 around in Philadelphia for a long time, but what

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2 we don't see is that 8 out of 10 restaurants
3 nationwide go out of business within the first 3
4 years.

5 So we've all chosen a high-risk
6 business venture, and we've all -- most of us have
7 put a great deal of our personal capital on the
8 line. So facing the odds when we went into this
9 business and then looking at increased odds that
10 changed after we're already in the business but
11 we've already signed that loan make us very
12 sensitive to anything that spends more money in
13 our facilities.

14 So I just want the Council as a whole
15 to understand that, that each month we're writing
16 out these mortgage checks, we're thinking about
17 our employees. And at the same time,
18 pre-mandated, many of us have taken provisions to
19 already better our indoor air qualities. So
20 having a better understanding of those
21 sensitivities may influence your decision a bit in
22 today's hearings.

23 (Applause.)

24 COUNCILMAN DICICCO: Thank you, Madam
25 Chair.

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2 Mr. Driscoll, I think what Councilman
3 Nutter -- at least for me anyway, what I'd like to
4 see when we keep talking about this working
5 committee and something I had suggested, I think,
6 last week, is that we have to have a target date,
7 at least initially to shoot for. Because if you
8 don't, you wind up with a situation like I've
9 wound up -- I have found myself in with the
10 carriage bill. It's two years, and even though I
11 set up a committee, we never really established
12 some dates in which to look to bring some closure
13 to this.

14 I suspect that whatever the Councilman
15 decides to do, that he'll probably not look to do
16 it immediately. And by "immediately," I would
17 suspect that he doesn't mean to do it over the
18 summer months. You know, we recess June 22nd, and
19 I think we reconvene on September 14th.

20 End of September, beginning of October,
21 from now to then, do you think that would be a
22 reasonable amount of time that this working
23 committee could work? I think it gives everybody
24 an incentive to really sit down and say, We really
25 got to get this done. Because if you say, Well,

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2 you know, maybe by the end of the year -- although
3 we're talking years, we're only talking months --
4 it just kind of leaves it rather open-ended. And
5 I think if you determine that by -- and I'm just
6 using September 30th of this year that the
7 committee report would come back to this Council
8 Committee for its recommendation, I think you'd
9 get a lot more done that way.

10 And I know everybody's going to be busy
11 with the convention coming and the summer but, you
12 know, hey, I'm here, we're willing to put our time
13 in. But I'm looking for some more definitive date
14 or dates to look at. And I think if we use the
15 end of the September, it will give us -- July,
16 August, September -- the better part of three
17 months.

18 And, again, I'm not suggesting that
19 that's acceptable to the rest of the folks up
20 here, but I'd like to start talking about that.

21 MR. DRISCOLL: I'd like to survey our
22 members and get back to you in short order.

23 COUNCILMAN DICICCO: Short order, see
24 that's -- we won't be here much lung longer, and
25 we are under a very busy time schedule right now

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2 with all of the bills that are coming out.

3 So, I mean, maybe we could make a
4 suggestion then we can talk about that suggestion.

5 MR. DRISCOLL: I think the end of the
6 year is reasonable. And I say that because you've
7 hit the nail on the head in that we hope -- and
8 this is very fluid right now but there are --

9 COUNCILMAN DICICCO: My point is, I
10 think that the foundation has been laid.
11 Basically everybody understands what is being
12 attempted to be accomplished here. I don't know
13 if you really need six months. I mean, three
14 months, you don't think that would be sufficient?

15 Because then you're going to wind up,
16 you're going to have the issue of, Well, the
17 holidays are on us, it's Thanksgiving, and then
18 it's the Christmas holidays. And you're really
19 not going to get anything done November through
20 December. So that would take us into the next
21 year, and I'd like to close that window a little
22 bit more somewhere between now and shortly there
23 after the time we reconvene, in late September,
24 early October at the latest.

25 And if you have to go back and survey

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2 them, fine, but I'm offering that as a
3 suggestion. But the end of the year, I think that
4 we run into too many other issues 'cause then we
5 get back into the business towards the December
6 calendar of getting bills out and all the other
7 things we have to deal with and budget, and it
8 really gets tight around here so --

9 MR. DRISCOLL: Right. Well, if I could
10 just speak to our members on that.

11 COUNCILMAN DICICCO: Thank you.
12 Councilmember Rizzo?

13 COUNCILMAN RIZZO: Thank you, thank
14 you.

15 I'm going to hold my question because I
16 see on the witness list that there's a -- is there
17 a represent of the HVAC industry here? Are they
18 here?

19 Okay, 'cause I wanted to point out that
20 I spoke with an HVAC contractor that tells me that
21 you have to be real careful, and guys have tried
22 to accommodate the smoking/nonsmoking by changing
23 ventilation. But you have to be careful; there's
24 some safety and fire code requirements that have
25 to be followed. You just can't start changing the

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2 way duct work flows without it really being
3 carefully considered.

4 So I'm going to hold that question
5 since there's someone here representing that
6 industry, just to make sure that these changes
7 that are being made aren't jeopardizing the
8 facility.

9 MR. DRISCOLL: Thank you.

10 COUNCILMAN DICICCO: Councilmember
11 Rizzo, are you through?

12 COUNCILMAN RIZZO: Yes.

13 COUNCILMAN DICICCO: Thank you.

14 COUNCILWOMAN TASC0: Paul Geissler
15 Enron Energy Services.

16 UNIDENTIFIED MAN: Excuse me,
17 Councilpeople. I have a statement here from --

18 COUNCILWOMAN TASC0: Are you Paul
19 Geissler?

20 UNIDENTIFIED MAN: No.

21 COUNCILWOMAN TASC0: Could we have Paul
22 Geissler first.

23 UNIDENTIFIED MAN: All right. Well,
24 this is in response to Councilman Nutter's
25 statement about Roger Jenkins.

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2 COUNCILWOMAN TASC0: Are you on the
3 list to testify?

4 UNIDENTIFIED MAN: But not for this.

5 COUNCILMAN NUTTER: You can testify
6 about whatever you want to testify about. We just
7 need to get your name and information. If you
8 could see the tall gentleman in the blue shirt
9 there and at least get him your information, then
10 you can come up and talk about whatever you want
11 to talk about.

12 UNIDENTIFIED MAN: But this is in
13 response to your --

14 COUNCILMAN NUTTER: I understand that.
15 I will be here, I will listen.

16 (Witness comes forward.)

17 COUNCILWOMAN TASC0: Paul Geissler?

18 MR. GEISSLER: Yes.

19 COUNCILWOMAN TASC0: Thank you.
20 Proceed with your testimony.

21 MR. GEISSLER: My name is Paul Geissler
22 I'm a member of the American Society of Heating
23 Refrigeration and Air-conditioning Engineers, the
24 local Philadelphia chapter. Michael Nutter asked
25 me to join this committee session today after a

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2 brief conversation yesterday in relationship to
3 HVAC impact for the proposed amendment and the
4 bill at the table.

5 My experience is 11 years of design and
6 engineering of HVAC systems, heating, ventilation,
7 or air-conditioning systems, for institutional,
8 hospital, office buildings, and commercial
9 applications.

10 Basically, I'm just here to answer
11 questions more so than give testimony.

12 COUNCILWOMAN TASC0: The Chair
13 recognizes Councilman Rizzo.

14 COUNCILMAN RIZZO: Mr. Geissler, I
15 think you heard my concern.

16 MR. GEISSLER: Yes.

17 COUNCILMAN RIZZO: A bit ago?

18 MR. GEISSLER: Yes.

19 COUNCILMAN RIZZO: Are you aware --
20 maybe I should be, but I'm not. When a person
21 wants to remodel or build a building and they
22 submit their building plan to the appropriate
23 department within government, they also have to
24 submit the HVAC plan; is that correct?

25 MR. GEISSLER: To my knowledge, yes,

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2 that is correct.

3 COUNCILMAN RIZZO: Now, if one of these
4 establishments would want to make alterations
5 using the existing HVAC system to accommodate a
6 nonsmoking area, would they have to resubmit the
7 plan to allow changes to that system?

8 And I'll continue my comment, my
9 question. Is it safe to say that an improper or a
10 change in the system could adversely affect the
11 safety and fire facility and also the residence?
12 Because I've heard many times where a fire has
13 actually used the duct work to move through a
14 particular building. And in many cases, it was
15 duct work that was not installed properly or with
16 good design criteria.

17 So could you just comment on that?

18 MR. GEISSLER: Well, I guess the best
19 way to comment on that is, there are codes in
20 place in the City of Philadelphia, primarily the
21 BOCA codes, which all engineers need to adhere to
22 in the planned specifications of their system.
23 Now, whether they are adhered to or not in
24 application is -- you can make a law but if nobody
25 follows it, you're in violation of the law.

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2 Now, yes, there is the possibility that
3 alterations or installations that are not per code
4 can create a hazardous situation.

5 Do all good installations prevent fires
6 and mishaps? No. Obviously, that's not the
7 case.

8 Now, I don't know if that answers your
9 question in terms of --

10 COUNCILMAN RIZZO: Aren't there some
11 requirements -- when you submit an HVAC plan to a
12 municipality and they review it, aren't there
13 requirements for fire dampers and things like that
14 that make a building and the occupants of that
15 building a safer place?

16 MR. GEISSLER: In my experience, the
17 primary concern of the building officials
18 inspecting plans is the proper application of fire
19 dampers, smoke partitions, smoke dampers, smoke
20 detectors to shut down air systems in the event of
21 an incident. That's basically their primary
22 focus.

23 COUNCILMAN RIZZO: So I think that
24 before this conversation is over, our Licenses and
25 Inspections people really need to be here to

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2 explain what interaction they're going to have in
3 the event that we go forward and more changes to
4 existing systems occur.

5 MR. GEISSLER: I agree they would be a
6 better resource.

7 COUNCILMAN RIZZO: Great. Thanks for
8 coming, and I don't know if anybody else has a
9 question.

10 COUNCILMAN NUTTER: Mr. Geissler, I'm
11 sorry. Your basic testimony was that from an
12 engineering standpoint, you believe that there are
13 either existing systems or technology that can
14 significantly improve indoor air quality by a
15 variety of either mechanical or aerodynamic
16 techniques?

17 MR. GEISSLER: Yes. You can improve
18 air quality with good HVAC designs and utilizing
19 good practice and good engineering.

20 COUNCILMAN NUTTER: And that's the
21 business that your firm is in?

22 MR. GEISSLER: Yes. It's not the only
23 issue with indoor air quality, but it is a
24 contributing issue.

25 COUNCILMAN NUTTER: Okay, all right.

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2 Thank you. Thank you very much.

3 COUNCILWOMAN TASC0: Thank you very
4 much.

5 Our next panel will be Riyadh Marahra,
6 Mary Tracy and Neil Stein.

7 (Witness comes forward.)

8 COUNCILWOMAN TASC0: Good afternoon.

9 MR. MARAHRA: Good afternoon.

10 COUNCILWOMAN TASC0: Would you state
11 your name for the record and proceed with your
12 testimony.

13 MR. MARAHRA: My name is Riyadh Marahra.
14 I am a business owner, a restaurant owner here in
15 Philadelphia, and I was invited to testify, to
16 voice my opinion for the smoking ban bill.

17 I strongly support it because the
18 nonsmoker does not have to suffer from any
19 secondhand smoking. We all heard what dangers of
20 the secondhand smoking. On top of that, I don't
21 think that will have any impact whatsoever on the
22 gross revenue. We all go to restaurants to eat,
23 we go to the lawyer to discuss our business, we go
24 to lawyer -- we don't have to smoke at that time.
25 I don't see anybody here smoking.

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2 And this is all thank you.

3 COUNCILWOMAN TASC0: Thank you.

4 COUNCILMAN NUTTER: Thank you.

5 COUNCILWOMAN TASC0: Miss Tracy.

6 MS. TRACY: Good afternoon. My name is

7 Mary Tracy, and I am from the Health Promotion
8 Council of Southeastern Pennsylvania. It's a
9 nonprofit corporation organized in 1981, with the
10 mission to promote health and prevent disease,
11 especially among those at greatest risk, through
12 education and outreach and advocacy. The Health
13 Promotion Council strongly supports a public
14 health policy aimed at protecting the rights of
15 all workers to breathe clean air.

16 In an effort to learn about the smoking
17 policies in the Philadelphia community, HPC
18 conducted an informal survey of 231 Center City
19 Philadelphia businesses. It was during that
20 survey that I met Riyadh, who is the owner of
21 Riyadh's Restaurant. We found that 77 percent or
22 177 out of 231 workplaces that we visited were
23 already smoke-free. And of the 55 workplaces that
24 allowed smoking, 85 percent, or 47, are connected
25 to the restaurant or hospitality industry.

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2 Employees in these restaurants work long hours and
3 breathe contaminated air, which contains over 4700
4 chemicals, 43 which we know are carcinogens.

5 We learned from the survey that if you
6 work in a hair salon or in a shoe repair place,
7 for a law or accounting firm, if you work in a
8 school, you'll breathe smoke-free air. If you
9 sell computers or books or clothing, even women's
10 lingerie, you breathe smoke-free air. If you work
11 for City Hall or in any of the publicly-owned
12 buildings, you breathe clean. Air travel
13 agencies, employment agencies, church offices,
14 airline offices -- I mean, you name it, every
15 single one of them, there is no smoking. And
16 several of them looked at me like, Well, isn't
17 that the law isn't, that already the law? And
18 they were pretty shocked to find out that it
19 wasn't.

20 I think for one reason we heard today,
21 that a lot of business owners have established
22 policies, and that has made it easier for the
23 businesses to say no smoking in this workplace,
24 because there has been a policy already set up.

25 And we know. I mean, I've been in this

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2 tobacco business for about four years now. I know
3 many of you because I'm a person who's interested
4 in the Philadelphia community. I'm an activist in
5 my own neighborhood, and I have become very
6 involved in issues that I think are important for
7 the public health and safety.

8 And we did not enter into this, I
9 guess, campaign because we wanted to hurt the
10 restaurants in this city. Quite the contrary. As
11 a Philadelphian, I am very proud of the
12 restaurants and I admire all of the entrepreneurs
13 that are having businesses, hiring people, and
14 serving food, because there's nothing I like more
15 than going out to eat. And it's not even about me
16 going out to eat and getting annoyed when I've
17 spent my hard-earned dollars on a meal and someone
18 ruins it with smoke. You know, I will make a
19 mental note and not return to that restaurant, and
20 sometimes it makes sad because it's a restaurant
21 where the food has been great.

22 But I can understand the choice issue
23 there. Yet I know that I don't get deathly sick.
24 There are people -- 8 percent of Philadelphians
25 have asthma, and so for them, they have to

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2 actually send somebody into the restaurant before
3 they can even venture in there. And there's a
4 whole world of eateries that they're deprived from
5 enjoying.

6 And I think what I've learned in this
7 tobacco business, because we've studied California
8 and we've studied Boston, we've studied New York,
9 and the same tactics are implemented every time:
10 the doom and gloom, that our industry will
11 collapse, that no one will eat at these
12 restaurants and that everyone will go over to City
13 Line.

14 Well, let me tell you, I live on the
15 edge of City Line, and I always come into Center
16 City because there is no place like the City,
17 there is no place out in the suburbs that I would
18 ever want to go to that would surpass what I find
19 in my city. And I think we'll find a lot of
20 people from the suburbs coming into the City
21 because they'll know that no matter where they go,
22 it will be smoke-free. That's my personal
23 opinion.

24 Now, I've heard the argument of
25 choice. I know, you guys are entrepreneurs, and

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2 you hate anybody -- particularly the government --
3 telling you what to do. But already the
4 government is there to ensure that the food is
5 clean and safe, that everybody washes their hands,
6 that there are smoke detectors. I mean, because
7 it's a public place, there are certain things we
8 already to have the government in to make sure we
9 feel safe in there.

10 And I think, you know, in a few years,
11 this will be a no-brainer and people will say, I
12 can't imagine what it was like when we were
13 allowed smoking.

14 And I actually want to pass this up
15 today because it was "World No Tobacco Day," very
16 appropriate today, "World No Tobacco Day." And
17 just randomly asking people if they would sign
18 this petition, and I have a copy for each
19 Councilmember, because you can see they're from
20 South Philadelphia, North Philadelphia, West
21 Philadelphia, Northeast Philadelphia, Germany. I
22 said to the German people, You're tourists here,
23 and we're really worried that tourists won't come
24 here if we have a smoke-free restaurant policy.
25 And they said, That's not a problem for us, we

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2 don't mind. Then I talked to someone from New
3 York, who said, You know what, we have the
4 smoke-free restaurants in New York, and I think
5 it's very backwards when I come to Philadelphia.

6 So the whole perception of
7 Philadelphia, you know, not having a smoke-free
8 restaurant law, a smoke-free workplace law, making
9 the world a safer place for everybody, it's time.
10 It's time, and maybe we did rush into it and maybe
11 the restaurant industry got their backs up because
12 they felt like we're trying to tell them what to
13 do. But it really isn't about that.

14 I think we really thought that if
15 everybody does it, no one's going to be hurt. And
16 that's what Mr. Riyad says. When I went and
17 talked to him randomly, he had his pregnant wife
18 there working and another -- it looked like
19 another relative. He said, I would love to have
20 smoke-free, but if I do it and nobody else does
21 it, I will lose business. And we don't want you
22 to lose business. This is not what this is about,
23 believe that.

24 One thing I would just like to hand up
25 with the testimony. You know, we had this fellow

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2 from Washington that came up here and sort of
3 quoted -- let me see, what did he say, something
4 about -- oh, yeah, Mr. Berman. I think he said, I
5 don't want to appear -- you know, I don't want to
6 -- what was the word? Something about the EPA
7 being intellectually dishonest. Well, we know the
8 EPA would never be intellectually dishonest. What
9 they do, their studies are valid.

10 But we do know the tobacco industry has
11 been dishonest. And if you would just turn back
12 to some testimony, there was a quote from an
13 employee of Philip Morris, an executive named
14 David Laufer, in 1994, when they were discussing
15 their strategy to override the bills in
16 California. And, basically -- basically -- maybe
17 Councilman Nutter, you could help me out here, if
18 someone could just read on the second page. It's
19 only three lines there.

20 COUNCILWOMAN TASC0: From your
21 testimony?

22 MS. TRACY: It was Mr. Laufer. What
23 Mr. Laufer said -- I apologize. I'll have to get
24 that to you, but he admitted that the economic
25 impact arguments -- "dire predictions," he called

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2 them -- used to generate oppositions to smoking
3 bans rarely come true. And I think we'll find
4 that here in Philadelphia, that these economic
5 impact arguments will not come true, that we will
6 be perceived as a progressive city that cares not
7 only about the public health -- this is the Public
8 Health Committee. You are the folks who have
9 listened to hour after hour and hour of testimony
10 by the public health experts, by the doctors who
11 treat patients. The people who really know about
12 secondhand smoke knows what it does, not the
13 restaurant industry.

14 I think it's our duty to do some action
15 to make our Philadelphia workplaces safer, our
16 public places safer, and our restaurant more
17 conducive to those of us who would like to attend
18 them.

19 Thank you.

20 COUNCILWOMAN TASC0: Thank you very
21 much.

22 Andy Simpson, Bruce Cooper, and Bill
23 Pawliczek.

24 (Witnesses come forward.)

25 The Chair recognizes Councilwoman

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2 Brown.

3 COUNCILWOMAN BROWN: I'd like to go on
4 the record by first saying that I was very, very
5 encouraged by Mr. Driscoll's comment. Is he still
6 here? Mr. Driscoll?

7 And having heard his willingness to sit
8 down with the Chair and members of the committee,
9 I want to go on record to support any amendments
10 that come forward before the committee that
11 reflect the dialogue, as well as going on record
12 to support the bill moving out of committee, with
13 the understanding that there will be a working
14 group and there will be a date certain that we
15 will get recommendations back on how to proceed
16 from that point forward.

17 COUNCILWOMAN TASC0: Thank you very
18 much.

19 Is Antonio Schiavone here?

20 Okay, would you all please proceed with
21 your testimony. Identify yourself for the record
22 and then proceed.

23 MR. SIMPSON: Yes. My name is Andy
24 Simpson, I'm the Area Director for TGI Friday's in
25 the City of Philadelphia, and I --

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2 COUNCILWOMAN TASC0: You testified
3 before. Do you have a significant different
4 testimony than you had before?

5 MR. SIMPSON: It is very similar, but
6 the last time I spoke, there was very few here, so
7 I think it was very late.

8 COUNCILWOMAN TASC0: Well, it's all
9 been made a part of the record, which is very
10 important, but we can't deny you the right to
11 speak so you can go ahead.

12 MR. SIMPSON: Well, the only real
13 significant issues were during the course of this
14 week, I had done some research into how some of
15 the amendments to Councilman Nutter's bill would
16 affect our restaurants, and in consultation with
17 some facilities people, it would be a significant
18 financial impact for us to adhere to some of these
19 amendments, as far as separate rooms and separate
20 ventilation systems.

21 And, you know, something that wasn't in
22 my first testimony was that over the past two
23 years, we've built five restaurants in the suburbs
24 of Philadelphia and South Jersey. And that's
25 mostly because it's tough to do business in the

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2 City, financially and otherwise.

3 And if this bill goes through, it's
4 going to make it even more financially difficult
5 for us, and that trend will probably continue
6 where, instead of building restaurants and
7 supplying jobs to the people of Philadelphia, we
8 will be forced to build those restaurant outside
9 of the City.

10 The rest of my testimony is pretty much
11 the same. I would just urge you not to pass this
12 bill.

13 And in reference to one of the
14 Councilman's comments earlier about how it will
15 affect our employees, I have one of my employees,
16 Laura Payne here, who would also like to testify
17 very briefly, who wasn't here last week, but was
18 standing listening how it would affect her as an
19 employee of Friday's.

20 COUNCILWOMAN TASCO: How many
21 restaurants do you have in the City of
22 Philadelphia?

23 MR. SIMPSON: Four.

24 COUNCILWOMAN TASCO: Where are they?

25 MR. SIMPSON: City Line Avenue, Second

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2 and South, 18th and the Parkway, and the
3 Philadelphia Airport.

4 COUNCILWOMAN TASC0: Thank you.
5 You may testify.

6 MS. PAYNE: Good afternoon. My name is
7 Laura Payne. I'm a waitress at TGI Friday's on
8 South Street. I'm also a single mother working to
9 raise my son and put myself through college. I am
10 not here for a pat on the back or for you all to
11 feel sorry for me but to give the Councilmembers
12 an opportunity to put a face to those that this
13 ban will have the greatest effect on.

14 I started working in this industry five
15 years ago. I never once considered my job to be
16 hazardous. After hearing the testimony of last
17 week, frankly, I still do not.

18 Waiting tables is my choice. If I had
19 problems with cigarette smoke, my managers would
20 make arrangements for me to work in other
21 stations. It is my choice, just as it is my
22 choice what job I take or what health risks are
23 involved in it.

24 When a customer comes into my
25 restaurant, they are given a choice: smoking or

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2 nonsmoking, or first available. Oftentimes, it
3 isn't their smoking preference that dictates where
4 they sit; it is how close they are to the bar or
5 how close they are to a television. From our
6 older patrons to our families with small children,
7 when there is a game on the television or there is
8 a good song on the radio, it doesn't seem to
9 matter where they sit.

10 For those that it does matter, our
11 restaurant offers three times more nonsmoking
12 tables than it does smoking ones. Only six of
13 those nonsmoking tables are located behind the
14 smoking stations, where they would have to walk
15 through the smoking stations to get to the
16 restrooms.

17 I love my job. But more importantly, I
18 need it. I work for tips, tips that are given
19 based on the amount of the guest bill. If this
20 ban takes away 20 to 30 percent of the sales in
21 our store, the only ones that would lose out here
22 are the servers, bartenders, hosts, and busers
23 that work depend on these tips. Even if the
24 percentage is not so drastic, I cannot afford for
25 sales to go down even 1 percent.

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2 The bottom line is that it has always
3 been always been my customers' choice whether or
4 not to smoke, whether or not to sit in a smoking
5 station, or patronize a restaurant that allows
6 people to smoke inside. The notion that someone
7 would have to drive an hour to find a nonsmoking
8 restaurant is simply not true. I'm fairly new to
9 the Philadelphia area, and I've managed to find
10 quite a few nonsmoking restaurants.

11 And the thought that anyone would be
12 forced to work in a hazardous environment is also
13 unreal. Again, it is my choice.

14 I'm asking the Council to take a real
15 look at who the ban going is going to affect.
16 Please let my customers continue to exercise their
17 right of choice. If they decide to come in and
18 dine with us, great. And if they don't, we won't
19 be happy, but it will still be their choice.

20 Thank you.

21 COUNCILWOMAN TASC0: Thank you very
22 much.

23 (Applause.)

24 MR. PAWLICZEK: Madam Chair, members of
25 the committee, I thank you for this opportunity to

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2 testify today. My name is William Pawliczek. I
3 am the owner of Cavanaugh's Restaurant, located at
4 39th and Sansom, in University City. I come
5 before you today in strong opposition of Council
6 Bill 314.

7 It is often said that the devil is in
8 the details, and such is the case with this
9 proposed smoking ban, as outlined in Council Bill
10 314 and its amendments.

11 First and foremost, in the time when
12 government and organizations around the world are
13 attempting to establish programs which reward
14 responsible alcohol service and management,
15 Philadelphia is moving in the opposite direction.
16 Allow me to explain.

17 Organizations such as MADD, SADD, NOBA,
18 and the Department of Transportation have
19 established programs to increase food consumption
20 while drinking alcoholic beverages. The notion
21 behind this program is to lower the blood alcohol
22 content and lessen the effect of alcohol upon the
23 consumer. By penalizing Philadelphia restaurants,
24 Council Bill 314 is contrary to the national
25 trends designed to control DWIs.

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2 Then there's the question of equality.
3 Everyone is treated differently in this bill. The
4 ordinance essentially bans smoking in many of the
5 City's larger, better ventilated restaurant, which
6 currently accommodates smokers and nonsmokers,
7 while it exempts gentlemen's club, private clubs,
8 union halls, veteran service organizations like
9 the VFW, small corner restaurants, and most
10 taverns. How absurd that the result of an
11 ordinance to allow smoking in small establishments
12 while banning it in larger establishments like
13 mine, who have made an effort to improve
14 ventilation and accommodate both smokers and
15 nonsmokers.

16 The ordinance is elitist in its resolve
17 to allow people who want to accommodate their
18 smoking family and friends and afford to have
19 their family reunion or wedding day rehearsal at a
20 private club, then precludes those who must have
21 their function at a more affordable restaurant
22 from doing so.

23 The ordinance is hypocritical. If the
24 smoking ban is a good idea, then why isn't it
25 applied everywhere, including bars, union halls,

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2 private clubs, and start-up establishments. My
3 opposition to this ordinance is almost entirely
4 due to its --

5 COUNCILWOMAN TASC0: Give us a moment,
6 please.

7 COUNCILMAN DICICCO: We don't want to
8 be rude and not listen to you. Excuse us.

9 (Break taken.)

10 - - -

11 (Proceedings resume.)

12 COUNCILWOMAN TASC0: Thank you. We're
13 sorry. We didn't mean to disrespect so please
14 continue with your testimony.

15 MR. PAWLICZEK: My opposition to this
16 ordinance is almost entirely due to its unfairness
17 to restaurants doing business side by side. How
18 can the heavy hand of local government create such
19 an unfair playing field among businesses who
20 compete.

21 As a restaurant owner and a prospective
22 developer of new restaurants in the future, there
23 is not a scintilla of a chance of me ever
24 developing a mid-scale or a fine-dining restaurant
25 in Philadelphia with more restrictive regulations

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2 than my competition in Bucks, Delaware, or
3 Montgomery Counties. This is a fairness issue, a
4 property rights issue, and a individual
5 responsibility issue.

6 The other fundamental issue here is
7 freedom of choice. Customers are free to choose a
8 smoking or a nonsmoking restaurant. Virtually all
9 of the restaurants affected by the ordinance have
10 a separate smoking area and room. No one is ever
11 forced to go to a smoking restaurant. People vote
12 with their feet every day in choosing where to
13 dine. This is how it works in America.

14 I am a nonsmoker who believes this
15 ordinance is way out of line for Philadelphia. As
16 a restaurant owner, I feel I am a responsible
17 business person who is capable of evaluating the
18 needs and the well-being of my customers and
19 employees and resent government placing artificial
20 limitations on who I may serve, especially when
21 some segments of the competition do not have to
22 operate under the same rules.

23 I have devoted my hospitality career to
24 be inclusive and welcome and serve all customers.
25 For the City of Philadelphia to prohibit my

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2 ability to accommodate smokers is grossly unfair.
3 Remember, the people get to choose where they eat
4 and where they work.

5 The message this ordinance sends is,
6 the end justifies the means, even if it's unfair.
7 The message this ordinance sends is tolerance and
8 respect of the individual doesn't extend to
9 smokers. The message the ordinance sends is, it's
10 okay for an adult to smoke if you're able to do it
11 in a private club or in a room in bar that serves
12 60 percent food or can afford to joy a join a
13 country club.

14 I have worked hundreds of hours to be a
15 responsible member of my community and to build a
16 respectable business in Philadelphia, a business
17 that is responsive to market forces and changes, a
18 business that embraces a policy of diversity and
19 inclusion. I have always found willingness on the
20 part of our community to address problems in a
21 reasonable, caring manner.

22 As a restaurant owner and a member of
23 Philadelphia's business community, I implore the
24 committee and the Council to invoke a sense of
25 reasonableness into this debate. What is

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2 reasonable is the establishment of a working group
3 of Philadelphians from both the public service
4 center and the impacted business community working
5 together to establish a policy and a plan which is
6 pro-health, pro-business, pro-consumer, inclusive,
7 nondiscriminatory, reasonable, evenhanded, and
8 enforceable, all of which Council Bill 314 is not.

9 Thank you.

10 (Applause.)

11 COUNCILWOMAN TASCO: Thank you very
12 much for your testimony.

13 MR. PAWLICZEK: Excuse me. I have an
14 employee here, Monica Gangolf (ph.), from
15 Finnegan's Wake, that would like to testify also.

16 COUNCILWOMAN TASCO: Thank you.

17 MS. GANGOLF: Good afternoon.

18 COUNCILMAN NUTTER: Good afternoon.

19 MS. GANGOLF: My name is Monica
20 Gangolf. I'm not here because anybody asked me to
21 be here; I'm here because I want to be here. I'm
22 66 years old, I have four children that I raised,
23 and I have seven grandchildren. I retired from
24 nursing a year ago. For 15 years, I worked in a
25 nonsmoking facility. A year ago, I retired, and

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2 guess what? I chose to work at Finnegan's Wake,
3 full of smoke. It was my choice.

4 When all of these things started, these
5 hearings started, nobody came to me. Nobody said
6 to me, "Monica, what do you think? You're an
7 employee. How do you feel about it?"

8 I can back to the hospital any day, I
9 can go back to the nursing home. I don't want to
10 do that. I'm working where I choose to work.

11 I'm very insulted that people say that
12 employees need to be told, they need to be
13 protected. You don't have to protect me. I've
14 been protecting myself for 66 years, and I
15 certainly don't need anybody now to tell me what's
16 good for me and what isn't good for me.

17 (Applause.)

18 MS. GANGOLF: I -- I think that's all I
19 have to say.

20 COUNCILWOMAN TASC0: Thank you very
21 much for your testimony.

22 Michael Smith, Fred Nichols. Fred, you
23 want to testify?

24 Is Antonio Schiavone here?

25 (Witnesses come forward.)

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2 COUNCILWOMAN TASC0: Good afternoon.

3 MR. SMITH: Good afternoon.

4 COUNCILWOMAN TASC0: Please identify
5 yourself for the record and proceed with your
6 testimony.

7 MR. SMITH: The American Lung
8 Association of Pennsylvania appreciates the
9 opportunity to --

10 COUNCILWOMAN TASC0: Just a moment.
11 Are you Michael Smith?

12 MR. SMITH: I'm Michael Smith.

13 COUNCILWOMAN TASC0: Would you wait a
14 moment, please, so Mr. Nichols can testify. He's
15 in that past group.

16 MR. NICHOLS: Good evening.

17 COUNCILWOMAN TASC0: Do you have
18 testimony for us?

19 MR. NICHOLS: Yes, I do.

20 COUNCILWOMAN TASC0: Okay, thank you.

21 MR. NICHOLS: My name is Fred Nichols,
22 and I am with the Philadelphia Unified Minority
23 Beverage Association. And I wish to thank the
24 Committee on Public Health and Human Services for
25 the opportunity to testify today about the

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2 proposed smoking ban.

3 First, I would like to say that I am
4 not personally a smoker. But like the vast
5 majority of people, I support the right of those
6 who wish to smoke. In my 45 years in the
7 business, I've had virtually no complaints from
8 nonsmokers about smoking in my lounge.

9 I am not a scientist, but I do know
10 there's disagreement between scientific studies
11 concerning secondhand smoke and bars and
12 restaurant around the country. The point is that
13 the issue is most certainly not clear-cut
14 regarding its health of effects.

15 An example: The EPA study used to ban
16 smoking in the State of California was deemed
17 flawed by Federal Judge Osteen (ph.). The Court
18 ruled that the EPA wrongly classified secondhand
19 smoke as a group A known human carcinogens, among
20 numerous other flaws. Nevertheless, based on this
21 erroneous information, the law was passed and the
22 California bars and restaurants were penalized and
23 lost business. The federal court confirmed that
24 it may be politically correct to attack secondhand
25 smoke, but it is not scientifically correct; nor,

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2 in the Federal Court's opinion, legally correct.

3 A few Sundays ago, as I always do, I
4 was watching the Sunday morning show, "Inside
5 Edition," where they have six panelists who are
6 broken down into so-called conservatives,
7 liberals, and independents, and these guys never
8 agree on any single one issue. This was the first
9 time that they were unanimous. They all agreed
10 that this bill was not good or necessary for our
11 hospitality industry. Everyone on the panel, as
12 we do in the industry, felt that the marketplace
13 should determine whether or not an establishment
14 should be smoking or nonsmoking.

15 Also today, we'd like to point out that
16 smoke ventilation are far more efficient than they
17 were in the past. When you go into a restaurant,
18 there are few smoke-filled rooms in the smoking
19 section of these restaurants, bars, and diners.
20 And you can make it mandatory that restaurants
21 have high-performance smoke ventilators in the
22 smoking sections of their lounges, restaurants, or
23 diners.

24 Believe me, as a businessman, if
25 smoking was causing us to lose customers, we

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2 ourselves would initiate a smoking ban, but such
3 is not the case.

4 Also, we who live in the City of
5 Philadelphia are aware of the millions of dollars
6 raised from the 10 percent liquor tax for the
7 Philadelphia School Board. This legislation could
8 be hurt from -- this legislation could hurt that
9 particular source of revenue.

10 And we also must be aware that there
11 are many fine restaurants and clubs in Delaware,
12 Bucks, Montgomery, and Chester Counties as well as
13 just across the bridge, in New Jersey. There are
14 no smoking bans in those establishments. That one
15 factor alone could determine whether the business
16 stays in Philadelphia or goes to a non-
17 Philadelphia eating or drinking place. I feel
18 that we will absolutely lose business to
19 out-of-city competitors as well as the City of
20 Philadelphia will lose valuable tax revenue.

21 We humbly ask you to reconsider this
22 current proposed legislation and permit a work
23 study group -- you've heard a lot about that in
24 previous testimony today -- and permit a work
25 study group with our hospitality coalition. I am

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2 confident that together, City Council and the
3 hospitality coalition -- I think it's officially
4 called "the Hospitality and Business Alliance" --
5 that working together, we would be able to come up
6 with a proposal to the mutual benefit of both the
7 City of Philadelphia and our industry.

8 I thank you for your consideration.

9 COUNCILWOMAN TASC0: Thank you very
10 much for your testimony.

11 (Applause.)

12 COUNCILWOMAN TASC0: Could we have Josh
13 Mitteldorf come up also.

14 (Witness comes forward.)

15 COUNCILWOMAN TASC0: And Sterling
16 Barr.

17 What we would like for you gentlemen to
18 do, if you have testimony, present it, and would
19 you summarize your testimony. I think we have
20 documented, with this hearing and the last one,
21 the adverse health effects from secondhand smoke.

22 Thank you.

23 MR. SMITH: Good afternoon,
24 Councilmembers. The American Lung Association of
25 Pennsylvania appreciates the opportunity to

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2 present comments to the City of Philadelphia. My
3 name is Michael Smith, and I serve as the
4 Communications Director for the five-county region
5 Southeastern Pennsylvania.

6 The American Lung Association is here
7 today to support Councilman Michael Nutter's bill
8 proposing an ordinance that would further protect
9 the public health and welfare from the dangerous,
10 unnecessary, and involuntary health risks
11 associated with secondhand tobacco smoke. We
12 thank those members of City Council who have
13 chosen to cosponsor this bill and encourage all
14 members of this Committee on Public Health and
15 Human Services, and, indeed, all members of
16 Council and Mayor Street, to support it as well.

17 The American Lung Association is
18 dedicated to the prevention of lung disease and
19 the promotion of lung health. I am here today not
20 only to represent the Lung Association, but the
21 interests of everyone who breathes indoor air, and
22 especially the interests of the 1 in 9
23 Pennsylvanians who struggle with chronic lung
24 disease, the people most at risk for health
25 problems precipitated by secondhand smoke.

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2 On April the 25th, this committee heard
3 irrefutable testimony on the adverse health
4 effects of secondhand smoke from the best medical
5 authorities on the subject at area hospital and
6 universities. In summary, these health
7 professionals testified that:

8 Secondhand smoke is bad for infants
9 before and after birth;

10 Secondhand smoke is bad for children;

11 Secondhand smoke is bad for adolescents
12 and adults;

13 And secondhand smoke is bad for
14 workers.

15 In short, it is a major public health
16 problem. We're not talking about a minor
17 inconvenience that should be tolerated or
18 accommodated; we're talking about a serious public
19 health concern.

20 Secondhand smoke contains a mixture of
21 thousands of chemicals, including dozens of
22 carcinogens, dozens of chemicals regulated as
23 hazardous in the air or in waste, and a couple
24 hundred poisons. It's responsible for about
25 50,000 deaths in the U.S. Every year, including

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2 lung cancer and heart disease.

3 Right now, many workers are forced by
4 their economic situations to choose between having
5 their health and having a job. We ask how many of
6 the establishments opposing Councilman Nutter's
7 bill and arguing so strongly for freedom and
8 choice are equally willing to uphold their
9 employees' rights to their freedom and choice not
10 to be exposed to the deadly carcinogens and
11 poisons in secondhand smoke.

12 Some witnesses may contend that better
13 ventilation may solve the problem. This simply is
14 not true. Better ventilation may reduce exposure,
15 but it doesn't eliminate it, and there is no known
16 safe exposure level to cancer-causing secondhand
17 smoke. It is simply not enough.

18 The Lung Association would ask Council
19 to remember that this is not, at its heart, a
20 public health issue, it is not a business issue;
21 exposing people to secondhand smoke does kill and
22 is not necessary for the accomplishment of any
23 legitimate business purpose. Public health policy
24 must be based on the scientific evidence and not
25 dictated by tobacco industry-funded and -supported

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2 fund groups. We know from experience throughout
3 the country that the tobacco industry tries to
4 protect its bottom line at the expense of public
5 health. Tobacco companies are not here because
6 they care about Philadelphia; they are here to
7 protect their own interests, they are trying to
8 instill in business owners by spreading
9 misinformation.

10 In conclusion, Councilman Nutter's bill
11 makes great strides to protect Philadelphians and
12 those who work and visit here. This bill is
13 reasonable and doable. It is past time to put
14 into place common-sense measures that protect the
15 rights of nonsmokers to be free from the assault
16 of known irritants, toxicants, and carcinogens in
17 public places and in the workplace. By voting in
18 favor of Councilman Nutter's bill, the American
19 Lung Association of Pennsylvania is satisfied that
20 the City of Philadelphia is acting within its
21 rights, indeed it's duties, to protect the health
22 of its own citizens.

23 Thank you.

24 COUNCILWOMAN TASC0: Thank you very
25 much.

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2 (Applause.)

3 COUNCILWOMAN TASC0: Mr. Mitteldorf.

4 MR. MITTELDORF: Good afternoon, ladies
5 and gentlemen of City Council. Thank you for
6 allowing me to testify. My name is Joshua
7 Mitteldorf, and I'm a researcher in the Biology
8 Department of the University of Pennsylvania. As
9 a volunteer, I also work on issues of public
10 health and the environment. I've been a board
11 member of the Clean Air Council for 13 years and
12 at the Coalition for a Tobacco-Free Pennsylvania
13 for 9 years.

14 I'm a father and a teacher and, like
15 many of you, I'm busy with many concerns. I have
16 to ration my time, so I come where I feel I can do
17 the most good, and that's why I'm a tobacco
18 activist.

19 Compared with any other hazard that we
20 face in our lives, compared with things that we
21 study and obsess about, that you pass laws to
22 address, compared to any of these things, tobacco
23 is a scourge of proportions far beyond any of
24 those other problems that you deal.

25 An epidemiologist is somebody who

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2 studies health and safety from statistical point
3 of view, a correlating various activities,
4 environmental hazards, with the health
5 consequences for some percentage of the people who
6 are at risk. Every person who studies
7 epidemiology is struck by the enormity of the risk
8 of smoking compared to everything else.

9 The total numbers of people, the number
10 of victims crippled and disabled is so huge, that
11 every epidemiologist has to ask himself, What is
12 the sense of working on any other public health
13 issue? The magnitude of the devastation is such
14 that even if we restrict our attention to
15 nonsmokers who are exposed in their homes and
16 workplaces to secondhand smoke, we find that
17 secondhand smoke is far and away the biggest
18 environmental hazard in our lives, hands down.

19 Part of what I do as a researcher and
20 teacher is to make numbers palpable to people who
21 aren't used to dealing with them, who have sound
22 and good, reliable qualitative methods of
23 reasoning, but to whom numbers don't have the
24 visceral sense that they have to me. Many of us
25 are informed by TV and newspaper accounts in which

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2 we see violence, we see murders, we see
3 terrorism. And we assume that these are the big
4 threats to our lives, that these are the things
5 that we need to concern ourselves with. And so
6 much misdirected attention is focused on how to
7 regulate these things, how to minimize them, how
8 to organize our society so that we can get rid of
9 them. But how little attention do we pay to the
10 things that are right under our noses that have a
11 much, much, much greater impact on our health.

12 Last week, we were privileged to have
13 here James Repace, who's probably the foremost
14 national expert on the epidemiology of secondhand
15 smoke. He reported to us his calculation that
16 8 percent of Philadelphia nonsmoking restaurant
17 workers will die a premature death as a result of
18 a career-long exposure to secondhand smoke. Now,
19 I gasped when I heard that number. I'm enured to
20 hearing these numbers, but that just hit me in the
21 gut. How can I make it similarly real for you?

22 I could talk about a hundred employees
23 at a typical Philadelphia high-end restaurant, a
24 large restaurant. And of those hundred employees,
25 a hundred of them will have health problems, a

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2 hundred of them will have their health affected --
3 they'll have more colds, they'll have more flus,
4 they'll have a greater risk of serious
5 complications. And at the very tail-end, 8 of
6 them, 8 out of 100 are going to die as a result of
7 their involuntary exposure to other people's
8 tobacco smoke.

9 These are not subtle effects that it
10 takes a statistician to measure. Any large
11 employer can tell you there's more absenteeism,
12 there's more disease in the workplace when smoking
13 is permitted than when it is not.

14 As an occupational risk, second hand
15 tobacco is just off the charts. We in the United
16 States don't permit our employers to put
17 employees' lives at risk in this way. Compare it
18 -- what would you like to compare it with? You
19 can compare it to mine workers, you can compare it
20 to welders who walk on those high beams high above
21 the construction site, you can compare it to the
22 police special forces who take their lives in
23 their hands to battle dangerous criminals or to --
24 people who defuse bombs every day for a living.
25 None of these occupations would tolerate a

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2 mortality rate of 8 percent.

3 This is a lifetime risk that every
4 waitress in a smoky diner is exposed to. If you
5 want a comparable, you can't look at occupations;
6 you have to look at war. Americans went off to
7 die in Vietnam several decades ago, and 4 percent
8 of those came back in body bags. This was
9 devastating. The lifetime risk among
10 Philadelphia's waiters and waitresses is twice as
11 high.

12 Another comparison with the Vietnam
13 War. Every 15 months, as many Americans die of
14 somebody else's tobacco smoke as died in the
15 entire Vietnam War. This is a scourge. This is
16 something we need to fight -- not with -- not by
17 compromise, not by taking economic issues and
18 balancing them against health. We just need to
19 take the action in our own hands and put tobacco
20 regulations on the same footing as every other
21 hazard in our lives.

22 I've been asked, If this is such a big
23 problem, why isn't it being addressed by the
24 federal government? Well, after years of
25 political interference by the cigarette companies,

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2 the EPA was finally able to release its report in
3 1992 and officially concluded for the first time
4 that cigarette smoke is a Class A carcinogen.
5 After that, by its own rules, the Occupational
6 Safety and Health Administration had no choice but
7 to move toward elimination of smoking in the
8 workplace.

9 But then what happened? The tobacco
10 industry came in with litigation. This is the
11 most aggressive litigation in the history of
12 environmental health. The tobacco industry knows
13 well what's at stake. They've dedicated a
14 bottomless fund to legal battles against this
15 regulation by OSHA. And as a result, it will be
16 years before the smoke clears and we have
17 smoke-free workplaces in the United States as a
18 nation.

19 So now you know why I come before you
20 today.

21 COUNCILWOMAN TASC0: Sir, could you
22 please kind of summarize this, summarize your
23 statement, come to a conclusion, please.

24 Thank you.

25 MR. MITTELDORF: When the FAA proposed

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2 to ban smoking on domestic flights, the tobacco
3 companies were right there telling us that people
4 wouldn't fly anymore. Before smoking was banned
5 in retail stores, we were told that shopping was
6 going to decline. When smoking was still
7 permitted in theaters, tobacco companies broadcast
8 their fear that people would just stop going to
9 the movies. And when smoking wasn't allowed at
10 sports event a few years ago, we heard that sports
11 attendance would plummet the moment the tobacco
12 was outlawed at these sites.

13 And, of course, none of these
14 catastrophes came to pass. And common sense tells
15 us that it's easier for smokers to refrain in
16 restaurants than in theaters or in sports arenas.

17 It seems an anomaly, doesn't it, that
18 restaurants should be the last place to fall? Why
19 is it, why is it that restaurants are the last
20 place left? Well, I suggest that it has something
21 to do with the fact that the tobacco industry has
22 been involved in trade groups representing this
23 industry for years. Tobacco companies have
24 generously funded these groups for decades,
25 provided disinformation in exchange for their

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2 economic support.

3 When the Restaurant Owners

4 Association's experts from out of town come to

5 talk to you about the importance of smoking for

6 restaurant business receipts, I suggest that you

7 ask them if they, like me, are taking an unpaid

8 day to come and speak out of their convictions.

9 If they're being paid for their testimony here,

10 perhaps you can trace their paychecks through the

11 laundry, back to Philip Morris.

12 By my memory, the last time a bill like

13 the present one came before City Council was in

14 1986. According to the talk that was on the

15 street, on the morning of the committee's vote,

16 every committee member awoke to find a \$1,000

17 check from the Tobacco Institute on his desk.

18 Now, the cigarette companies have grown a good

19 deal more sophisticated since then and a lot more

20 subtle, but their role is the same, and so is

21 their willingness to do whatever it takes to

22 achieve their ends.

23 Before I close, I want to say a few

24 words about smokers. Think of a cigarette not as

25 a pinch of dried tobacco leaf rolled in paper. A

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2 cigarette is a high-tech product containing
3 hundreds of ingredients, the result of decades of
4 research. And all of this research is directed
5 towards just one thing, and that is to make the
6 person who smokes that cigarette want another one.
7 Nicotine is the core addictive ingredient, but the
8 nicotine delivery system has been optimized and
9 enhanced in every way known to science, with the
10 sole aim to defeat the smoker's own will.

11 So the next time you hear smokers being
12 described as "people who choose to smoke," think
13 differently. Smokers are victims of the tobacco
14 industry, seduced at a tender age into an
15 addiction that they cannot give up. The average
16 smoker has tried to quit every two years, since he
17 was in high school. But for people who live and
18 work among smokers, the decision is difficult to
19 hold to. A smoke-free workplace is the best gift
20 that we can give to a smoker. It offers him the
21 support that he needs to make the choice that he's
22 wanted to make for a long, long time.

23 Thank you.

24 COUNCILWOMAN TASC0: Thank you very
25 much.

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2 Mr. Barr, could you give a brief
3 testimony, please.

4 MR. BARR: My name is Sterling Barr,
5 and I'm working with the Tobacco-Free Education
6 and Action Coalition for Health. I'm primarily
7 responsible for educating thousands of youths and
8 adults around the issue of drugs and alcohol
9 abuse.

10 I just want to testify just to say that
11 I'm not a smoker but I grew up in a household of
12 pretty much all smokers, and I know how smoking
13 has affected my family. My grandmother has a
14 boarding home and was affected by secondhand
15 smoke. She had gone through many tests and it
16 showed that she had tar lungs from, you know,
17 having this boarding home. And each year, she
18 would lose a client to lung cancer.

19 And as a result of that, she changed
20 the policy in her own home, where she no longer
21 allows smoking there. And then each year, year
22 after year, more and more of her clients were
23 living a lot longer.

24 I have a eight-month-old son, and I
25 recently just, you know, from working in the

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2 tobacco education field over the years, I've
3 gained a lot of knowledge. I think people who,
4 you know, go to restaurants and go into the
5 nonsmoking section, they look at that as a safe
6 heaven. They think because it's nonsmoking, they
7 -- really, many of the folks who visit the
8 restaurants have no idea of the harmful effects of
9 secondhand smoke and how it travels.

10 I think, over the years, just going
11 around and visiting restaurants and eating in
12 restaurants, you know, I too, was one to always
13 ask for the nonsmoking section but now knowing
14 harmful effects of the secondhand smoke. If many
15 of these restaurants don't have nonsmoking, I
16 choose not to eat at them. I just visited a
17 restaurant in the last week and it was a Chinese
18 buffet restaurant, and the waitress asked me if I
19 wanted smoking or nonsmoking. I said, Is there a
20 nonsmoking section in this restaurant? But the
21 only thing that separated the smoking from the
22 nonsmoking was a rail, and it was all one big
23 room. So, I mean the smoke, travels where it
24 wants.

25 I just think it's very, very important

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2 that we look not only at the health of the
3 citizens in Philadelphia but of our children. We
4 can't go out and dine with our kids because we
5 don't want to expose our children, you know, to
6 secondhand smoke. So I think it's very, very
7 important, you know, that the bill go into effect,
8 not only for the lives of the people who are the
9 nonsmokers but also for the people who smoke.

10 I think people who go into restaurants
11 and smoke, they don't have the intentions in
12 harming other folks. Many people are just now
13 learning of the harmful effects of tobacco, and we
14 hear over and over again that it's the number-one
15 preventable cause of death.

16 Now, people have a choice to do what
17 they want to do, I think that's true as well as
18 people have the right to choose to breathe clean
19 air, and I definitely don't want to expose
20 children to secondhand smoke because, you know,
21 they can't speak up and say, Is this nonsmoking or
22 smoking? They have to go with what I choose for
23 them. As adult, we need to set better examples
24 for our youth.

25 I work in a middle school where I run

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2 smoking cessation programs for 5th, 6th, 7th, and
3 8th-grade students who currently smoke, trying to
4 get them to quit smoking. Many of them have
5 parents who smoke. In addition to that, some of
6 students I work with, I had them sign a petition
7 in reference to this bill, and over 200 students
8 at this middle school signed it. And even the
9 smokers who signed the petition said they'd rather
10 eat in a nonsmoking restaurant.

11 So I think that passing this bill is
12 really something that would do justice for both
13 the smokers, you know, and the nonsmokers if this
14 bill goes into effect because it will help clean
15 the air.

16 COUNCILWOMAN TASCO: Thank you all very
17 much.

18 Next is the panel of views of citizens:
19 Michael Sklaroff, Dr. Robert Sklaroff, Edna
20 Dirkson, Michael McFadden, and Pete Salometo.

21 (Witnesses come forward.)

22 COUNCILWOMAN TASCO: The Chair
23 recognizes Councilman Nutter for a statement.

24 COUNCILMAN NUTTER: Thank you, Madam
25 Chair.

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2 Madam Chair, at the appropriate time,
3 but certainly very shortly, I would like to put
4 forward a number of amendments to the bill, based
5 on today's testimony and discussion, on the record
6 with regard to a variety of provisions affecting
7 Bill No. 314. I would only ask -- and I don't
8 want to limit anyone's testimony, but I would only
9 ask members of the public if they could get
10 through their testimony, I'd like to have that
11 opportunity to put those amendments forward. I
12 think they're important elements to the bill. And
13 I would greatly appreciate your cooperation.

14 Thank you.

15 COUNCILWOMAN TASC0: Thank you.

16 MR. SALOMETO: I'm one of the parties
17 that's here as a citizen's voice citizen.

18 COUNCILWOMAN TASC0: Identify yourself
19 for the record.

20 MR. SALOMETO: I'm Peter Salometo, and
21 I'm here to testify in opposition to House Bill
22 314. The other citizen voices apparently don't
23 want to share the table with me because they're in
24 favor of the bill under consideration.

25 COUNCILMAN NUTTER: That's okay.

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2 MR. SALOMETO: In any event, I'm one of
3 50 million adult smokers who choose to smoke, and
4 I sometimes think in today's politically correct
5 environment as regards tobacco use, my views and
6 those of others similarly situated are not heard
7 or given the same weight afforded of those
8 anti-smoking zealots who have as their agenda a
9 total ban on the use of tobacco. They skillfully
10 use understandable concern over the use of tobacco
11 by minors as well as questionable statistics in
12 research on secondhand smoke to advance this total
13 ban agenda.

14 As an example of questionable studies,
15 last Wednesday, both Dr.'s Walter Tsou and Robert
16 Simmons cited a May '99 study published in the
17 Journal of the American Medical Association, which
18 reported absolutely no adverse economic effects on
19 local economies as a result of smoking
20 restrictions in six cities and three states.

21 COUNCILWOMAN TASC0: Sir, could you
22 please summarize statement. It seems that you
23 have a long statement.

24 MR. SALOMETO: I have about a
25 five-minute presentation. Can --

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2 COUNCILWOMAN TASC0: We're going to ask
3 you to cut it down.

4 MR. SALOMETO: All right, well I'll
5 move to the summary then.

6 COUNCILMAN NUTTER: Thank you.

7 MR. SALOMETO: Essentially, the study
8 that was cited used only hotel revenues and
9 tourist rates and not restaurant attendance, so
10 the author's study, Mr. Glass, was mixing apples
11 with oranges.

12 We find with the 1998 Congressional
13 attempt to raise a pack of cigarettes by \$1.10 tax
14 amounted to a \$500 billion tax scheme that would
15 fall on the people who could least afford it,
16 those making \$30,000 per year or less. The same
17 would apply to a lot of these changes to one's
18 restaurants based on ventilating them and so
19 forth. They would, again, fall on the smaller
20 restaurants that have the least amount of
21 wherewithal to take care of that.

22 COUNCILMAN NUTTER: All right. Sir?

23 MR. SALOMETO: Yes.

24 COUNCILMAN NUTTER: I don't want to be
25 disrespectful to you in any way, shape, or form.

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2 We can take your statement and add it to the
3 record as if it was read in the record.

4 MR. SALOMETO: Very well.

5 COUNCILMAN NUTTER: I assure you of
6 that. Would you like to hand it forward?

7 MR. SALOMETO: But the previous three
8 speakers who were speaking in support of your bill
9 were given a fairly lengthy time.

10 COUNCILMAN NUTTER: All right. I
11 appreciate that, but I will also admit to you that
12 we've been waiting for some amendments to come,
13 and the Councilmembers are now prepared to try to
14 take some action, so --

15 MR. SALOMETO: Very well. I'll read
16 the last paragraph, sir, if that's all right.

17 COUNCILMAN NUTTER: Thank you. I
18 apologize to you.

19 MR. SALOMETO: And I'll conclude my
20 statement.

21 COUNCILMAN NUTTER: Thank you. I'm not
22 trying to cut off what you're trying to say.

23 MR. SALOMETO: I'm an independent
24 businessman and investor and have no connection to
25 the tobacco industry whatsoever. What I'm trying

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2 to do here today is to bring all points of view to
3 the table and to the attention of this honorable
4 committee. I'm confident that the Council and the
5 committee will do the right thing, bearing in mind
6 the rights of smokers and nonsmokers alike and the
7 needs of Philadelphia's business community who
8 have stuck it out here through thick and thin.

9 Thank you, sir.

10 COUNCILMAN NUTTER: Thank you very
11 much.

12 COUNCILWOMAN TASC0: Thank you very
13 much.

14 Miss Dirkson, we would ask you to limit
15 your testimony to two minutes.

16 MS. DIRKSON: My name is Edna Dirkson.
17 All I want to say is, my daughter was diagnosed
18 that she had lung cancer in the year of 1998. And
19 she passed last June -- I mean, June of '99. And
20 the effect was of secondhand smoke. She had lung
21 cancer.

22 COUNCILMAN NUTTER: Thank you very much
23 for your testimony.

24 COUNCILWOMAN TASC0: Thank you very
25 much.

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2 COUNCILMAN NUTTER: Thank you.

3 COUNCILWOMAN TASC0: Dr. Sklaroff.

4 DR. SKLAROFF: I'm Bob Sklaroff, and I
5 submitted my written testimony already. I
6 represent a union. I'm a physician and Mrs.
7 Dirkson's daughter, who died, was a nonsmoker and
8 she lived in a smoking environment, and we're
9 still working through the condolence period.

10 And very often, when I see patients, I
11 try to point out the fact that they should not
12 blame themselves for having gotten addicted. This
13 one was a little more difficult to do because she
14 was not in any way addicted to tobacco; and yet,
15 she suffered its side effects.

16 One of the things that hadn't been
17 emphasized in the prior testimony by the
18 representative for the Surgeon General was the
19 fact that it's not just cancer, but also heart
20 that's disease caused by cigarette smoking.

21 And now my son would like to make a
22 fast comment, and then I'll summarize my critique
23 of what you just heard from the other people, and
24 I will be terse as well.

25 MICHAEL SKLAROFF: I am Michael

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2 Sklaroff. And, well, first of all, you shouldn't
3 even be smoking in the first place. I don't know
4 why that's even being allowed.

5 But few month ago months ago, we went
6 to -- we were going to a children's concert -- or
7 an adult concert. And, well, we were trying to
8 eat dinner beforehand because the concert ended
9 really late, so we went to a nearby restaurant.
10 The restaurant was, like, totally smoke, no air,
11 kind of, and it made my eyes hurt and it made me
12 cough.

13 I really don't like cig -- I just don't
14 want cigarette smoke in public places where
15 nonsmokers go.

16 That's all.

17 COUNCILWOMAN TASC0: Thank you very
18 much.

19 DR. SKLAROFF: A couple fast points.

20 We listened earlier to the citation of
21 the Jenkins study. So I called a friend of mine
22 in Pittsburgh, who knows all this stuff, who
23 testified last week, and he told me a couple of
24 the arguments debunking it.

25 The key point that I would want to make

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2 is in the paper, in the New York Times yesterday,
3 there was a little small letter written by Cliff
4 Douglas, and he pointed out a distinction with a
5 difference every time you hear people who are
6 functioning on behalf of the tobacco industry, and
7 they'll say they're new, they're changed, and
8 they'll admit that there are studies out there
9 that claim health effects, but they won't quite
10 say whether they believe them here.

11 Same thing here. We listened to this
12 man Rick Berman quoting information but not quite
13 saying whether or not he believes it, just putting
14 it out there as testimony, which was effectively
15 debunked by Councilman Nutter, but yet the
16 conclusion that these people have been making, and
17 I've been arguing with them for 20 years in
18 various venues, is the jury is out, respectful
19 people can disagree and so forth. And I would
20 propose that sometimes it's not the case, you have
21 to come to conclusions.

22 And I would respond to the nurse who
23 also spoke earlier as an employee of a restaurant
24 by saying she has a choice to do whatever she
25 wants by suggesting that some people don't have

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2 that choice, and that's one of the reasons why
3 there are certain laws to protect workers in the
4 workplace.

5 I would say to talk against hype, that
6 I've been talking about this issue for 15 years,
7 and I've often been interviewed, like, by Herb
8 Deninberg, and all my arguments would be ending up
9 on the floor of the editing room because I was not
10 strongly enough asserting with sound bites that
11 tobacco smoke is evil, even when it's inhaled,
12 fourth term involuntary smoking, and so forth.

13 There are studies showing that the
14 side-stream smoke actually has more carcinogens
15 than mainstream smoke but it's really hard to come
16 to a conclusion that when you're breathing most of
17 the time without a smoke-filled room that's it's
18 going to make any difference empirically.

19 So I've always simply argued that the
20 right to smoke and the right to swing your fists
21 has always ended at the tip of my nose, and that
22 kind of, I think, common-sense argument may very
23 well ultimately drive some of the decision-making
24 that you may wish to pursue in this situation.

25 And thank you for your time.

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2 COUNCILWOMAN TASC0: Thank you very
3 much.

4 Is there anyone else here to testify on
5 this bill? Would you come forward please? You
6 have two minutes.

7 MR. MULLINS: I'll use 30 seconds.

8 (Witness comes forward.)

9 MR. MULLINS: My name is Chris Mullins,
10 I own the Gillen's Old Ale House in Center City
11 Philadelphia. It is the oldest tavern and
12 continuous operation in the City of Philadelphia
13 and one of the oldest in the country.

14 The only reason testifying today is
15 that I do resent the fact that some people are
16 indicating that my colleagues and the members of
17 my profession are paid off by the cigarette
18 companies.

19 I want to ask this committee to
20 respectfully to consider a delay on any kind of
21 vote today. Gillen's has been around for 140
22 years, we'll survive another 140 years whether you
23 make the rule or not. I have a 30-year mortgage
24 on my home, I have a 15-year mortgage on my
25 business, so I hope to be around for a bit. Last

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2 year, I spent \$2,000 to improve the ventilation in
3 my kitchen for the health benefit of my
4 employees. And this year, last year, we attempted
5 to invest, and have invested, \$35,000 in a new
6 air-conditioning system. It took the City of
7 Philadelphia almost five months to grant us a
8 permit to install this ventilation and this
9 air-conditioning.

10 I'm asking you for time. Just like I
11 was denied the right to put this air-conditioning
12 in last September until February so that the City
13 could consider the impacts of my air-conditioning
14 system, which I did to improve the quality of air
15 in my business at great personal expense, I'm
16 asking you for time. Please study this a little
17 bit more thoroughly and see what the unintended
18 consequences of such legislation will be.

19 Thank you.

20 COUNCILWOMAN TASC0: Thank you very
21 much.

22 (Applause.)

23 COUNCILWOMAN TASC0: Would you identify
24 yourself for the record.

25 MR. JONIK: My name is John Jonik. I'm

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2 not a doctor or a scientist, as I'm sure I'll be
3 asked later, but I've been a health care activist
4 for a long time and an environmental activist for
5 at long time.

6 I've been sitting through these
7 hearings and I, even though I'm just a cartoonist
8 and a member of the National Writers Union as a
9 writer, I notice more word irregularities than I
10 have time to write down. The very basis of the
11 whole entire hearings, I think, might be
12 invalidated by the fact that there isn't one
13 single expert who can come forward with any
14 evidence about harms of tobacco smoke. They may
15 have lots of evidence about pesticide-saturated
16 cigarettes, cigarettes with chlorine elements in
17 it, cigarettes with, you know, adhesives and
18 plastics. And going back through the years,
19 asbestos even, which, finally, they got rid of.

20 So what I'm saying is that the wording
21 of this legislation should be accurate for the
22 sake of justice and law and for science.

23 What's happening is, a lot of people
24 are using cigarette industry marketing language.
25 They're calling it "tobacco" when there are U.S.

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2 patents from Philip Morris, you know, of ways to
3 make cigarettes out of industrial waste of all
4 different kinds -- municipal paper waste,
5 agricultural waste, food processing waste, and so
6 forth, to which they add a little bit of
7 nicotine. This is in U.S. Documents.

8 The United States Environmental
9 Protection Agency has documents about the harms of
10 dioxins, which come from the chlorine elements in
11 cigarettes. It also points out the presence of
12 these things in cigarettes. At the same time, it
13 has laws outside forbidding the release of these
14 kind of dioxins for health reasons from
15 incinerators. They don't somehow notice that they
16 have these records when they come to talk about
17 indoor tobacco smoke. You have to put quotes
18 around almost every single word here, and I think
19 that's invalid in the case of law, medicine, and
20 science.

21 And I hope that this thing will be
22 stalled enough to go back and look at the wording
23 to make sure the right people are being targeted,
24 not the victims. The bar owners and restaurant
25 owners and the victims should not be responsible

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2 for putting these in-secret chemicals in
3 cigarettes.

4 There's a law, the 1984 Comprehensive
5 Smoking Education Act, which forbids educating
6 anybody about what's in cigarettes. A public
7 health commissioner could go to jail for revealing
8 what's in a cigarette. Trade secrets or
9 liability, we have to decide this.

10 Other cities and other municipalities
11 have started laws about the fire-starting
12 chemicals that are still legal in cigarettes in
13 spite of all the concerns. Children are dying,
14 houses, firefighters, property loss. The fire-
15 starting chemicals are still legal in cigarettes,
16 which makes me doubt the intentions of some of the
17 health concern people.

18 There's a lot to go into. I've
19 presented some documents from Health and Human
20 Services, from the Centers for Disease Control in
21 Atlanta. These are not whacko documents. They're
22 from the government. They have the information.
23 Calling this a tobacco problem is a scapegoating
24 situation and the bar and restaurant people are
25 being a part of the scapegoat scene, and so are

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2 store owners who have to do I.D.'s and all that
3 sort of things.

4 That will be enough for now. I have a
5 lot of it here, and there's a lot more if anybody
6 cares to see my 8-foot pile of information at
7 home.

8 COUNCILWOMAN TASC0: Thank you very
9 much.

10 MR. MCFADDEN: My name is Michael
11 McFadden. I was on the program right near the
12 end, but I didn't hear my name called.

13 I would like to apologize and explain
14 earlier. Councilman Nutter had been making some
15 very direct comments about a study by someone
16 named Roger Jenkins, and I had an e-mail from
17 Roger Jenkins this morning that would have
18 responded directly to Councilman Nutter's
19 comments.

20 COUNCILWOMAN TASC0: Would you like
21 present copies for the record?

22 MR. MCFADDEN: I only have the one
23 copy, which would have been good for the people
24 who heard Dr. Jenkins' integrity questioned, if
25 they could have heard defense as well.

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2 I have my own testimony, which is short
3 and will be about four minutes, not two.

4 COUNCILWOMAN TASCO: Two.

5 MR. MCFADDEN: Thank you for the
6 opportunity to speak here today. My name is
7 Michael McFadden, and I'm a long-term resident of
8 West Philadelphia. I have no connection to any
9 bars, restaurant, or tobacco companies, other than
10 being a good customer.

11 Last Wednesday, you heard from
12 anti-smoking advocates that environmental tobacco
13 smoke had been added to the National Toxicology
14 Register as a carcinogen. What you didn't here
15 was that alcohol and sunlight were also added at
16 the same time. What the anti-smoking choose to
17 ignore when presenting their arguments for bans
18 like this one is the clear and simple fact that
19 there has never been, and very likely never will
20 be, any level of threat at all from the
21 microscopic levels of exposure to smoke that one
22 would get in a well designed nonsmoking section.

23 If you refer back to the testimony that
24 started off today's session, you'll note that the
25 advisor to the Surgeon General referred several

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2 times to the health effects of smoky and
3 smoke-filled rooms. At no point did she indicate
4 that well-ventilated smoking and nonsmoking
5 sections could be a problem. Even a mild movement
6 of air pushes smoke quite effectively in the
7 direction of the air movement. Smoke does not
8 travel where it wants.

9 I'm going to skip the whole middle of
10 the presentation which dealt with studies on
11 secondhand smoke.

12 COUNCILWOMAN TASCO: The record is
13 overcrowded with that.

14 MR. MCFADDEN: Yes. I'll skip to the
15 last two paragraphs here, short ones.

16 Councilpeople, I do not believe we are
17 here today because of a real concern about the
18 health of nonsmokers; we are here because smoking
19 bans are seen as one of the most effective weapons
20 in the arsenal of social engineering when it comes
21 to reducing smoking and getting smokers to quit
22 smoking. At least three of the anti-smoking
23 advocates testifying last Wednesday mentioned such
24 a point in their testimony, and it was mentioned
25 again today.

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2 I am here today, Councilpeople, because
3 this is not George Orwell's 1984. Our government
4 should not be in the business of making laws
5 designed to press for citizens into thinking in
6 proper ways or conforming to a politically correct
7 healthy lifestyle. Education about the dangers of
8 smoking is fine; social engineering and behavioral
9 modification is not. That's not what the
10 government of the United States is supposed to be
11 abdomen and by voting for (unintelligible) like
12 this one, I believe you will actually be hurting
13 our country and its people a lot more than you
14 will be helping it.

15 Thank you.

16 COUNCILWOMAN TASC0: Thank you very
17 much.

18 (Applause.)

19 COUNCILWOMAN TASC0: There being no
20 further testimony, this hearing is -- the Chair
21 recognizes Councilman Nutter. We'll go into a
22 public meeting.

23 The Chair recognizes Councilman Nutter
24 to present the amendments, which have been
25 circulated to the committee. He will be brief.

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2 COUNCILMAN NUTTER: Thank you, Madam
3 Chair. As instructed I will be brief. I have
4 additional copies of additional proposed
5 amendments to Bill No. 000314.

6 Madam Chair, I will be making reference
7 to the bill as currently amended primarily by page
8 number or section number, as appropriate.

9 On Page 3 of the bill -- I'm sorry,
10 this is the first amendment. On Page 3 of the
11 bill, re-number Section 1 as Section 2; and add a
12 new section to read as follows:

13 Section 1. Declaration of Legislative
14 Findings and Intent. Council finds, based upon
15 testimony provided to the Council by the United
16 States Environmental Protection Agency ("EPA"),
17 the Office of the United States Surgeon General
18 (the "U.S. Surgeon General") and nine medical
19 professionals. That the health risks attributable
20 to exposure to environmental tobacco smoke
21 ("ETS") (also known as secondhand smoke, passive
22 smoke, or involuntary smoke) are well
23 established. The EPA and the U.S. Surgeon General
24 have concluded exposure to ETS is a cause of lung
25 cancer. Further, the EPA has found that ETS is

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2 responsible for the lung cancer deaths of
3 approximately 3,000 nonsmokers in the United
4 States each year, and is a deadly carcinogens
5 which belongs in the category of Group A (known
6 human) carcinogens. Studies conducted by the EPA
7 and the U.S. Surgeon General have also concluded
8 that exposure to ETS causes other significant
9 health problems in adults, including reduced lung
10 function, coughing, excessive phlegm production,
11 and chest discomfort. In addition, the EPA
12 testified that ETS has been linked to heart
13 disease and the onset of chest pain.

14 The EPA has also concluded that
15 exposure to ETS is a substantial health risk to
16 children, as it is causally linked with, among
17 other things, an increase in the prevalence of
18 childhood respiratory illnesses, an increase in
19 the prevalence of fluid in the middle ear of
20 children (the most common cause of hospitalization
21 of children in need of an operation), and a
22 significant reduction in the lung function of
23 children. Moreover, the EPA has found that
24 exposure to ETS increases the number of episodes
25 and increases the severity of symptoms in

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2 asthmatic children and causes non-asthmatic
3 children to develop this condition each year.

4 The EPA also reports that 25 percent of
5 the United States are smokers.

6 In order to protect against the dangers
7 associated with ETS, over 800 jurisdictions in the
8 United States, including cities such as Boston,
9 Massachusetts, and New York, New York, have
10 enacted local laws which restrict smoking in
11 public places.

12 The Council of the City of Philadelphia
13 finds that many Americans, including the citizens
14 of Philadelphia, are likely to be exposed to ETS
15 due to its current widespread presence in public
16 places and in the workplace. The Council further
17 finds that exposure to ETS presents a substantial
18 health risk to nonsmokers. It is, therefore,
19 Council's intention to strengthen existing local
20 laws which limit the areas in which smoking is
21 permissible. In order to protect and promote the
22 public's health, safety, and welfare, Council is
23 enacting further restrictions on smoking in public
24 places and in the workplace to protect children
25 and nonsmoking adults from the health hazards

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2 presented by exposure to ETS.

3 The second amendment is on Page 6 of
4 the bill. Add a new subsection 10-602(1)(j) to
5 read as follows:

6 (j) "Restaurant Bar." A contiguous
7 area in a restaurant containing a counter and
8 which is primarily devoted to the selling and
9 serving of alcoholic beverages for consumption by
10 patrons on the premises and in which the serving
11 of food, if served at all, is only incidental to
12 the sale or consumption of alcoholic beverage in
13 such restaurant bar.

14 Amendment No. 3. On Page 11 of the
15 bill, add a new subsection 10-602(2)(b)(.8) to
16 read as follows.

17 (.8) Through March 31, 2001, within a
18 Restaurant Bar, as long as either (i) the
19 perimeter of the Restaurant Bar is located at
20 least 10 feet from the perimeter of any indoor
21 dining area (other than the seating area within
22 the Restaurant Bar) of the restaurant; or (ii) the
23 Restaurant Bar is separated by a solid
24 floor-to-ceiling partition from any indoor dining
25 area (other than the seating area within the

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2 Restaurant Bar) of the restaurant; and provided
3 that the Restaurant Bar is not the sole indoor
4 patron waiting area of the restaurant. This
5 exception permitting smoking in Restaurant Bars
6 shall not apply after March 31, 2001.

7 Amendment No. 4. On Page 12 of the
8 Bill, in subsection 10-602(3)(a), replace the word
9 "section" with the phrase "this subsection
10 10-602(3)," so that the subsection reads in its
11 entirety as follows:

12 (a) Within 90 days after this
13 subsection 10-602(3) takes effect, all employers
14 with a workplace within the City shall adopt,
15 implement, make known, and maintain a written
16 policy that prohibits smoking within any
17 workplace. This requirement shall not apply to
18 any workplace covered by a collective bargaining
19 agreement or similar bonding agreement between
20 labor and management that includes provisions
21 regarding smoking in the workplace.

22 Amendment No. 5. On page 12 of the
23 Bill, in subsection 10-602(4)(a), delete the word
24 "prohibited" and replace it with the word
25 "regulated," and in subsection 10-602(4)(a)(.1),

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2 after the phrase "Post 'No Smoking' signs," insert
3 the phrase "and other signs relating to smoking on
4 the premises," so that those subsections read in
5 their entirety as follows:

6 (a) The owner, operator, manager,
7 employer, or other person in control in every
8 place where smoking is regulated by this section
9 shall take the following actions and shall not be
10 cited for any violation of this section if all
11 such actions are taken:

12 (.1) Post "No Smoking" signs and other
13 signs relating to smoking on the premises in
14 compliance with regulations to be promulgated by
15 the Health Department.

16 Amendment No. 6. On Page 13 of the
17 Bill, in subsection 10-602(4)(b), after the phrase
18 "building leased to others ('Leased Premises'),"
19 insert the phrase "in which smoking is regulated
20 by this Section," and in subsection
21 10-602(4)(b)(.1), after the phrase "Post 'No
22 Smoking' signs," insert the phrase "and other
23 signs relating to smoking on the premises," so
24 that those subsections read in their entirety as
25 follows:

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2 (b) The owner or manager of a building,
3 with respect to any portion of the building
4 leased to others ("Leased Premises") at which
5 smoking is regulated by this Section, shall take
6 the following actions, and shall not be cited for
7 any violations of this Section if all such actions
8 are taken:

9 (.1) Post "No Smoking" signs and other
10 signs relation to smoking on the premises in
11 compliance with regulations to be promulgated by
12 the Health Department;

13 Amendment No. 7. On Page 14 of the
14 Bill, re-number subsection 10-602(6) as 10-602(7),
15 and insert a new subsection 10-602(6) to read as
16 follows:

17 (6) Study and Report on Restaurant
18 Bars.

19 (a) The Health Commissioner
20 ("Commissioner") shall form a Study Group
21 consisting of the members of City Council's
22 Committee on Public Health and Human Services,
23 representatives of any other City departments,
24 boards, commissions, or other agencies of the City
25 government the Commissioner deems appropriate, and

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2 representatives of the restaurant and hospitality
3 industry in Philadelphia. The Study Group shall
4 study methods of and, if deemed appropriate,
5 develop recommendations with respect to
6 preventing, to the greatest extent practicable,
7 secondhand smoke from drifting or recirculating
8 from Restaurant Bars to indoor smoke-free areas of
9 restaurants.

10 (b) the study and any recommendations
11 of the Commissioner and the Study Group shall
12 include, but not be limited to, the advisability
13 of requiring Restaurant Bars to construct or
14 implement any of the following: separate smoking
15 rooms; enclosed rooms; ventilation systems;
16 separation of a Restaurant Bar from indoor
17 smoke-free areas by means of a partition; and
18 spatial separation of a Restaurant Bar from indoor
19 smoke-free areas by a specific distance.

20 (c) In determining the advisability of
21 requiring that certain protections from secondhand
22 smoke be provided in Restaurant Bars, the
23 Commissioner and Study Group shall consider any
24 applicable standards or recommendations of
25 representatives of the restaurant and hospitality

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2 industry in Philadelphia, the American Society of
3 Heating, Refrigerating, and Air-Conditioning
4 Engineers, the United States Environmental
5 Protection Agency and the Occupational Safety and
6 Health Administration of the United States
7 Department of Labor with respect to indoor air
8 quality relating to secondhand smoke, the impact
9 on public health of exposure to secondhand smoke,
10 and any other factors which the Commissioner and
11 the Study Group deem appropriate.

12 (d) The Commissioner and the Study
13 Group shall submit a written report to Council by
14 November 1, 2000 as to the results of their study
15 and any recommendations. Council shall consider
16 such report, but need not follow the
17 recommendations of such report, in determining
18 whether to extend or modify the exceptions set
19 forth in subsection 10-602(2)(b)(.8) permitting
20 smoking in Restaurant Bars under certain terms and
21 conditions until March 31, 2001.

22 Amendment No. 8. On Page 15 of the
23 Bill, add a new Section 3 to read as follows:

24 SECTION 3. Effective Dates.

25 (a) Except as set forth in subsections

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2 (b), (c), and (d) below, this ordinance shall take
3 effect 90 days after it becomes law, provided that
4 any City agency is authorized to promulgate any
5 regulations and take any other actions needed to
6 prepare for implementation of this ordinance
7 immediately after this ordinance becomes law.

8 (b) The provisions of subsection
9 10-602(3) of the Philadelphia Code, as added by
10 Section 1, shall take effect immediately.

11 (c) The provisions of subsection
12 10-602(2)(a) of the Philadelphia Code shall take
13 effect with respect to restaurants 210 days after
14 this ordinance becomes law (the "Initial
15 Restaurant Effective Date"). The owner of any
16 restaurant who in good faith considers the
17 construction of a separate smoking area or lounge
18 at which smoking will be permitted under
19 subsection 10-602(2)(b)(.6) shall have until 150
20 days after the Initial Restaurant Effective Date
21 to apply for any permits necessary to perform such
22 construction, and until such time, these
23 prohibitions or subsection 10-602(2)(a) of the
24 Philadelphia Code shall continue not to apply
25 within such restaurant. If such owner has applied

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2 for such permits during such 150-day period, then
3 the provisions of subsection 10-602(2)(a) shall
4 first apply to such restaurant at the earlier of
5 (i) the date of completion of any physical
6 alteration of premises necessary to provide the
7 separate smoking area or lounge; or (ii) 180 days
8 after the issuance of the final permits necessary
9 to perform construction.

10 (d) Notwithstanding any other
11 provision of this section, all restaurants shall
12 be subject to the provisions of subsection
13 10-602(2)(a) of the Philadelphia Code on and after
14 December 31, 2001.

15 Amendment No. 9. On Page 9 of the
16 Bill, insert the word "Outdoors" at the beginning
17 of subsection 10-602(2)(a)(.7), so that the
18 subsection reads in its entirety as follows:

19 (.7) Outdoors within 10 feet of any
20 entrance to any Enclosed Area in which smoking is
21 prohibited under this Section, except for any
22 sidewalk cafe licensed under Section 9-208 or
23 otherwise permitted by special ordinance, or any
24 outdoor deck, patio, or similar outdoor service
25 area which is part of a restaurant establishment.

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2 Amendment No. 10. On Page 11 of the
3 Bill, make the following two technical changes:
4 delete the word "and" at the end of subsection
5 10-602(2)(b)(.6)(iii), and substitute "; and" for
6 the period that appears at the end of subsection
7 10-602(2)(b)(.6)(iv).

8 COUNCILWOMAN TASC0: Thank you very
9 much.

10 The Chair calls on Councilman DiCicco
11 to accept the amendments as read.

12 COUNCILMAN NUTTER: Madam Chair, just
13 two other statement, if I can put them into the
14 record. A concern has been raised with regard to
15 the composition of the study group that is
16 referenced in the appropriate section. The
17 concern was that the study group should be
18 balanced to represent the interests of not only
19 the Council and any governmental agencies, whether
20 City or federal, but also representatives of the
21 restaurant and hospitality community.

22 I would like to state for the record,
23 Madam Chair, and to my colleagues that I will
24 certainly work to ensure and make a commitment to
25 balance on this committee. Obviously, we cannot

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2 have a tremendously large committee nor a
3 tremendously small committee, but it will
4 certainly be a balanced committee, and I make that
5 commitment to the members of the restaurant and
6 hospitality community as well as my colleagues.

7 Secondly, it is certainly my intention,
8 Madam Chair, to have the work of the study group
9 proceed as soon as possible, and either by way of
10 a phone call from myself as the sponsor of bill or
11 you as Chair of the committee, we would ask the
12 Health Commissioner to begin putting the study
13 committee together.

14 Lastly, should the committee decide to
15 not only amend the bill but vote it out of
16 committee, I do not expect, nor anticipate, nor
17 would I ask that any action be taken on this bill
18 prior to our legislative recess by the entire
19 Council.

20 COUNCILWOMAN TASC0: Thank you very
21 much.

22 COUNCILMAN DICICCO: Councilman, on
23 that same note, would you agree that, assuming
24 that the study group continues to work through the
25 process, that you would not anticipate calling on

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2 a vote on this until -- not before November 1st of
3 2000?

4 COUNCILMAN NUTTER: I would not expect
5 that, Councilman. And I would think that only
6 under the most unique of circumstances, with
7 consensus and the various interested parties to
8 this, including the restaurant and hospitality
9 community, if for some reason there was a request
10 for a vote by agreement with the community prior
11 to the study group's work, which, again, I think
12 would be an extraordinary circumstance, that would
13 be a decision to be made by the entire body.

14 COUNCILMAN DICICCO: Thank you.

15 COUNCILWOMAN TASC0: So I hope it's
16 clear to all the parties and the stakeholders that
17 a study group will be convened by the Health
18 Commissioner, that they will have until November
19 1st to try to get some consensus on whatever, and
20 that nothing will take place until -- we don't
21 know, whenever.

22 COUNCILMAN NUTTER: There are a variety
23 of health-related and --

24 COUNCILWOMAN TASC0: But no action will
25 be taken on this bill unless the committee comes

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2 back to this Council and say that we have reached
3 some consensus or agreement.

4 COUNCILMAN NUTTER: They may possibly
5 come back at an earlier point in time before the
6 deadline that we've established in the bill. That
7 certainly would be the discretion of the
8 committee.

9 COUNCILWOMAN TASC0: Is that clear?

10 Thank you very much.

11 All in favor will signify -- I call on
12 Councilman DiCicco to move for the adoption of the
13 amendments.

14 COUNCILMAN DICICCO: Thank you, Madam
15 Chair. I move for the adoption of the amendments
16 -- I move for the adoption of the amendments to
17 Bill No. 314, as just read into the record by
18 Councilman Nutter.

19 COUNCILWOMAN TASC0: Thank you. Do I
20 hear a second?

21 (Duly seconded.)

22 COUNCILWOMAN TASC0: All in favor will
23 signify by saying aye.

24 The amendments have been adopted.

25 COUNCILMAN MARIANO: One opposed.

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2 COUNCILWOMAN TASC0: Oh, there's one
3 opposition by Councilman Mariano.

4 COUNCILWOMAN TASC0: Can I get a motion
5 for the adoption of the bill as amended?

6 COUNCILMAN DICICCO: Thank you, Madam
7 Chair. I move for the adoption of Bill 314, as
8 amended.

9 COUNCILWOMAN TASC0: Can I get a
10 second?

11 COUNCILMAN NUTTER: I'm sorry. Is this
12 a motion to try to report it out of committee?
13 Is that what you're --

14 COUNCILMAN DICICCO: For the purpose of
15 reporting it out of committee.

16 COUNCILMAN NUTTER: Right, okay.

17 COUNCILWOMAN TASC0: Can I get a
18 second?

19 (Duly seconded.)

20 COUNCILWOMAN TASC0: It has been moved
21 and seconded that Bill No. 000314, as amended, be
22 reported out of committee with a favorable
23 recommendation.

24 All those in favor will signify by
25 saying aye.

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2 Opposition?

3 COUNCILMAN MARIANO: Aye.

4 COUNCILWOMAN TASC0: One opposition,
5 Mariano.

6 Thank you very much. This ends the
7 public meeting. We're adjourned.

8 (Adjourned at 6:15 p.m.)

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RE: COMMITTEE ON PUBLIC HEALTH AND HUMAN SERVICES

14

BILL NO. 000314

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JOSEPHINE CARDILLO,

Registered Professional Reporter