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 24, 2000
3:30 p.m.

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BILL 000314 - Bill No. 314, an ordinance amending Chapter 10-600 of the 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.

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- Clarke Piatt, MD, Temple University Hospital Division of Pulmonary, Critical Care and Sleep Medicine
- Michael Smith, American Lung Association
- Joseph Miott, Esquire, Executive Director Clean Air Council

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P R O C E E D I N G S

COUNCILWOMAN TASCO: Good afternoon. I'd like to call the Committee on Public Health and Human Services to order. I am Councilwoman Marian Tasco, the Chair of the Council Committee on Public Health and Human Services. And I'd like to state that a quorum is present in the persons of Councilman Goode, Councilman DiCicco, Councilman Nutter -- who has been appointed to this committee by the President, Councilman Nutter has -- Councilman Rizzo, and Councilman Ortiz. And Councilwoman Blondell Reynolds Brown is here.

This resolution was introduced by -- this ordinance was introduced by Councilman Michael Nutter, and they have prepared the witness list. If you have not added your name to the witness list and would like to address this body this afternoon, please see Brenda Frazier up here at the front, who will now read the bill.

THE CLERK: Bill No. 000314, an ordinance amending Chapter 10-600 of the 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.

Thank you.

COUNCILWOMAN TASCO: The Chair recognizes Councilman Nutter for remarks.

COUNCILMAN NUTTER: Thank you, Madam Chair.

I hadn't really planned any, but this is a -- I believe this bill is trying to address a serious public health issue and, at the same time, balance the issue of commerce and economic development here in the City. I know that there are a variety of opinions on this particular matter. I respect the views and opinions of everyone who will come to the table, especially the concerns that will be articulated by various people from the business community.

I expect that the Councilmembers, both on the committee and any members present or listening to these proceedings, will take all of this information seriously, take it into consideration. And where there are opportunity to work out some of the differences that people may

have, all of us, I believe, are certain amenable to that.

And I look forward to the testimony that everyone has to present. I appreciate everyone's participation as well as the information that they have shared from either side of this debate or discussion.

Thank you, Madam Chair.

COUNCILWOMAN TASCO: Are there any other comments from members of the committee before we ask our panelists to begin?

(No comments from committee members.)

COUNCILWOMAN TASCO: I'd like to call on Dr. Walter Tsou, the Commissioner of Public Health for the City of Philadelphia and Miss Judy Katz from the EPA.

(Witnesses come forward.)

DR. TSOU: Councilwoman Tasco, thank you very much for inviting me to speak today. My name is Dr. Walter Tsou. I'm Health Commissioner for the City of Philadelphia. Thank you for the opportunity to speak on behalf of Bill No. 314, introduced by Councilman Michael Nutter.

On April 25, City Council Committee on

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Public Health and Human Services held hearings on the adverse effects of secondhand smoke. Many experts spoke on the harmful effects of secondhand smoke. The EPA has classified secondhand smoke as a Class A carcinogen, based on several epidemiological various studies, and various studies have associated secondhand smoke with lung cancer heart disease, asthma, and lower-respiratory tract infections, especially in children. Serum cotinine, a biological marker for exposure to secondhand smoke has been found in 88 percent of nonsmokers over the age of 4. So this affects not just people who don't smoke, but particularly people who work in the restaurant industry.

In a December 1998 article in the Journal of the American Medical Association, bartenders were examined for changes in their pulmonary and respiratory functions before and after California passed its smoke-free law. Bartenders actually noted a 59 percent improvement in respiratory symptoms and measurable improvements in their pulmonary function tests. In other studies, restaurant workers were 60 to

100 percent more likely to be exposed to tobacco smoke than other office workers.

If it were not for the theatrical economic impact of creating smoke-free restaurants, there would be no question that we should support this bill. However, the literature actually supports the economic benefits of smoke-free environments.

In the May 26, 1999 issue of JAMA, Glantz and Charlesworth published the most complete study examining the economic effect of the passage of smoke-free restaurant ordinances on tourism and hotel revenues. This study examined three states and six cities, including the major cities of New York, San Francisco, and Los Angeles. The study showed that either no change or, in fact, increased revenue in all of the areas studied.

Concern was raised that international visitors would be disinclined to visit because of their own countries' less restrictive smoking regulations. However, in this is the study, there was no change in the number of international visitors. In fact, more significantly, hotel

revenues increased for Los Angeles by $47 million, New York City by 85.5 million, San Francisco by 49.9 million, after going smoke-free. Previous public health studies have shown no effect on restaurant revenues for communities that have gone smoke-free.

The non-economic impact of smoke-free ordinances has now been confirmed in studies in 89 cities across America. As of September '98, 212 communities and 3 states had enacted laws mandating smoke-free restaurants, and one state (California) and 31 communities had enacted local ordinances requiring smoke-free bars. These ordinances not only protect nonsmokers from the toxins of secondhand smoke, they also create an environment that encourages smokers to quit.

The authors of the JAMA study concluded the following: "Food-service workers enjoy the least protection from secondhand smoke of any employee group. Legislators and government officials can enact such health and safety requirements to protect patrons and employees in restaurants from the toxins in secondhand smoke without the fear of adverse effects on tourism.

Indeed, these ordinances may even be beneficial for business."

In short, going smoke-free is actually good for business and good for health -- a true win/win.

We should not underestimate the challenge ahead of us. Despite decades of warnings about the dangers of smoking, 24 percent of Pennsylvanians continue to smoke. The Surgeon General's national health objective for the year 2010 for the prevalence of smoking in adults over age 18 is 12 percent, half of what our current smoking rate is. Most disturbingly, between 35 to 40 percent of Pennsylvania 12th-graders have smoked cigarettes in the past month. Our year 2010 health objective is 16 percent. This is a future generation of smokers, who will bear an increasing burden on our health care system, and we must view cigarette use as a serious health risk. The time for action is now.

In 1997, our latest year for vital statistics, 5,272 Philadelphians died of heart disease, 1,272 Philadelphians died of lung cancer, 1,083 died of a stroke, 570 died of chronic

obstructive lung disease. All of these deaths could have been dramatically reduced if people simply did not smoke.

It is said that statics are numbers without tears. Behind each of these deaths were careers disrupted, families devastated, and children left without a parent. We should never minimize the profound impact that change in the rules could have in improving these tragedies.

City Council has a unique opportunity to clearly send a message to young people and Philadelphians: that cigarette-smoking is unhealthy and should be discouraged. Currently Section 10-602 of the Philadelphia Code currently prohibits smoking in a limited number of public places. This bill, No. 314, will further expand the prohibition of smoking to:

1. All enclosed places where the public has access.

2. Within 20 feet of any entrance of an enclosed place where smoking is prohibited.

3. All restaurants.

4. All workplaces.

5. Common areas of buildings,

including lobbies, hallways, elevators, and 75 percent of the rooms in hotels and motels.

Our health department supports the passage of this important piece of legislation. We recognize the difficulty presented by City Council in weighing the choices of economics versus health. The City represents not only our own residents, but we pay for the medical expense of 24,000 employees and over 100,000 residents in our district health centers. We have a strong economic incentive to create smoke-free environments.

The Surgeon General's national health objective for 2010 is for every state to pass legislation creating smoke-free restaurants and public and private workplaces. Philadelphia, with the passage of this legislation, can join other major cities such as New York, Los Angeles, and San Francisco in advancing smoke-free environments.

Tobacco is the leading preventable risk factor for premature deaths in America. An estimated 420,00 tobacco-related deaths occur annually. Behind each of these deaths were

opportunities for those of us empowered with the responsibility to protect our citizens by creating an environment where we should do all we can to save lives.

When doing the right thing in public health is also the correct economic choice, we should do it. Do it for our employees, do it for our restaurant workers, do it for our residents. Just do it.

Thank you for the opportunity to speak on this important piece of legislation, and I am happy to answer any questions.

COUNCILWOMAN TASCO: Thank you very much.

(Applause.)

COUNCILWOMAN TASCO: Are there any questions so far?

(No questions.)

COUNCILWOMAN TASCO: We'll asks Miss Katz to make her presentation, then we'll come back for questions.

MS. KATZ: Thank you, Madam Chair and members of the committee, for the invitation to appear here today. I am pleased to have this

opportunity to share information with the committee on the U.S. Environmental Protection Agency's program for environmental tobacco smoke and our recommendations to reduce or eliminate the exposure of persons, especially children, to environmental tobacco smoke, also known as "secondhand smoke," also known as "passive smoking."

My testimony today will focus on EPA's current information on secondhand smoke, the effects of children and adults to secondhand smoke, and our recommendations to reduce their exposure.

The EPA firmly maintains that the bulk of the scientific evidence demonstrates that secondhand smoke causes lung cancer and other significant health threats to children and adults. EPA's report, Respiratory Health Effects of Passive Smoking, Lung Cancer, and Other Disorders, was peer-reviewed by 18 eminent independent scientists, who unanimously endorsed the study's methodology and conclusions. Since EPA's 1993 report, which estimated the risks posed by secondhand smoke, numerous independent health

studies have presented an impressive accumulating body of evidence that confirms and strengthen's EPA's finding.

The EPA report classified secondhand smoke as a Class A carcinogen, which means there is sufficient evidence that the substance causes cancer in humans. The Group A designation has been used by EPA for only 15 other pollutants, including asbestos, radon, and benzene. Only secondhand smoke has actually been shown in studies to cause cancer at typical environmental levels. EPA estimates that approximately 3,000 American nonsmokers die each year from lung cancer caused by secondhand smoke.

Secondhand smoke, or environmental tobacco smoke, is a mixture of the smoke given off by the burning end of a cigarette, pipe, or cigar and the smoke exhaled from the lungs of smokers. This mixture contains more than 4,000 substances, more than 40 of which are known to cause cancer in humans or animals, and many of which are strong irritants. It's a widely accepted scientific fact that secondhand tobacco smoke poses significant risks to public health. It is important to note

that Americans concerned about their health and the health of their children should continue to avoid exposure to secondhand smoke.

Secondhand smoke is a serious health risk to children. The developing lungs of young children are affected by exposure to this kind of smoke. Infants and young children whose parents smoke are among the most seriously affected by exposure to secondhand smoke, being at increased risk of lower-respiratory tract infections such as pneumonia and bronchitis.

EPA estimates that passive smoking is responsible for between 150,000 and 300,000 lower-respiratory tract infections in infants and children under 18 months of age annually. This results in between 7,500 and 15,000 hospitalizations each year.

Children exposed to passive smoke are also more likely to have reduced lung function and symptoms of respiratory irritation like cough, excess phlegm, and wheezing. Passive smoking can lead to buildup of fluid in the middle ear, the most common cause of hospitalization for children for an operation.

Asthmatic children are especially at risk. EPA estimates that exposure to secondhand smoke increases the number of episodes and severity of symptoms in hundreds of thousands of asthmatic children. EPA estimates that between 200,000 and 1 million asthmatic children have their conditions made worse by exposure to secondhand smoke. Passive smoking may cause thousands of non-asthmatic children to develop the condition each year.

Passive smoking irritates the lungs, leading to coughing, excess phlegm, chest discomfort, and reduced lung function. It may affect the cardiovascular system, and some studies have linked exposure to secondhand smoke with the onset of chest pain.

There was a time when the decision to permit smoking in an enclosed public area was an issue of balancing smoker's convenience with the potential annoyance to the nonsmokers. But today, we know from scientific research studies that secondhand smoke is more than an annoyance; it causes many deaths each year. Passive smoke exposure is the second leading preventable cause

of death among nonsmokers.

Nonsmoking areas in restaurant one way to accommodate nonsmokers, although they did not completely eliminate exposure to secondhand smoke exposure. Despite smoke-free policies in many workplaces, close to a quarter of Americans who work indoors are exposed to secondhand smoke. In workplaces, the use of designated smoking areas was another way to reduce exposure to secondhand smoke.

The evidence is clear and consistent. Passive smoking is a cause of lung cancer in adults who don't smoke. Even though lung cancer risk from secondhand smoke is small compared to the risk from direct smoking, unlike a smoker who chooses to smoke, the nonsmoker's risk is often involuntary. From the estimated 3,000 lung cancer deaths in the US each year among nonsmokers, 800 are from exposure at home, and 2,200 from exposure in the workplace or social situations.

In the workplace, EPA recommends that every company have a smoking policy that effectively protects nonsmokers from involuntary exposure to tobacco smoke. Many businesses and

organizations already have smoking policies in place, but these policies' effectiveness varies. Separating smokers and nonsmokers within the same area may not be effective since re-circulated air will still expose nonsmokers.

Some options include prohibiting smoking indoors or limiting smoking to rooms that have been specially designed to prevent smoke from escaping to other areas of the building. Air from the smoking room should be directly exhausted to the outside by an exhaust fan. The ventilation system should provide the smoking room with 60 cubic feet per minute of supply air per smoker. Nonsmokers should not have to use the smoking room for any purpose. Employer-supported smoking cessation programs are also helpful. Designated smoking areas outside, where nonsmokers may have to pass through to enter the building, is discouraged.

In restaurant and bars, separate smoking areas rely on simply separating nonsmokers from smokers. And this may reduce exposure, but it does not eliminate involuntary exposure to secondhand smoke. Placement of smoking areas

should be determined with some knowledge of the ventilation characteristics of the space to minimize nonsmoker exposure.

In the absence of state or local laws restricting smoking in bars, restaurants, and other public places, one can encourage the proprietor to consider his or her nonsmoking clientele, and many places do.

Federal laws now prohibit smoking on all airline flights of six hours or less within the US and on all interstate bus and train travel. Many states have laws prohibiting smoking in public facilities such as schools, hospitals, airports, bus terminals, and other public buildings.

EPA recommends that in general, one not smoke in the presence of children, particularly infants and toddlers. Adults are just as susceptible to poor health problems from exposure to secondhand smoke. If smoking indoors cannot be avoided, increased ventilation in the area where smoking takes place and open windows or using exhaust fans can help. The best way to eliminate exposure to passive smoke is to designate areas as

smoke-free or to assign separate areas for smokers which exhaust directly to the outside.

And I am happy to answer any questions from you. I brought one of my staff members, Mr. Fran Dougherty, and both of us are prepared to answer your questions.

COUNCILWOMAN TASCO: Thank you very much.

Are there any questions from members of the committee?

COUNCILMAN DICICCO: Madam Chair?

COUNCILWOMAN TASCO: Councilman DiCicco.

COUNCILMAN DICICCO: Thank you.

My question is for the doctor. In your testimony, you cite a survey that was done by the Journal of the American Medical Association back in 1998, and you reference that in the study, the Journal examined three states and six cities, including New York, San Francisco, and Los Angeles. And then further in your statement, you indicate that as a result of that study, the Journal, or the people who conducted the study, said that there was an increase in revenues to the

hotel industry in those three cities, and it's anywhere from $47 million, up to $85 million.

I guess I'm curious as to, how did they get to that number? do you have any knowledge of that? Did they question people, Is the reason you're coming to these three cities, has it encouraged you to come here now because there's a smoke-free, or there's nonsmoking legislation now that prohibits smoking in certain public places?

Because the other night, I was watching television and I noticed that they were doing some reports on air pollution throughout the country. And those three cities were in the top ten cities that are recognized as the most unhealthiest cities when it comes to terms of air pollution. And I wonder if people really make that conscious decision to either go to a city or a state based on what the smoking laws are all about.

And I'll use myself as an example. I've been to Rome 3 times in the last 24 months or less. And I don't know who doesn't smoke in Italy because in every restaurant, everyone is smoking. No matter where you go, it's smoke, smoke, smoke. And I'm not a smoker. I'm somewhat offended by

it, but I really like the fact -- I love Italy and I look forward to going there again, and I understand that that's part of what Italy's about, and that's the culture there. And I'll go, because by choice, I make the decision to go. I could obviously make the choice not to go.

So I'm a little bit con -- I'm not familiar with the study, obviously. I wonder if you are more familiar with it.

Tourism is up, generally. It has been for the last eight years or so, in this country and throughout the world. Every report that I've looked at, when look at doing things in Philadelphia to promote tourism, I see nothing in the reports that indicates anything that it may be a good economic tool to pass legislation that would prohibit smoking in public places and things like that, but tourism is up, I guess, because the economy is doing well.

And they Philadelphia to New York -- Philadelphia which doesn't have the prohibition on smoking in public places, and compare it to New York to say, Well, Philadelphia, you're not doing as well as New York because people still can smoke

in your restaurants and hotels, but they can't smoke in restaurants and hotels in Los Angeles; therefore, you're not doing as much business.

I'm just curious if you have any comments on that.

DR. TSOU: Well, let me try to answer that.

I think -- first off, your experience in Italy and the experience of people who come to New York, San Francisco, and Los Angeles clearly show that they come to those cities, or to those countries, based on what is available in tourism. And people will come to Philadelphia not because they have a smoke-free ordinance or because we have a smoke-free ordinance, they will come because of the Liberty Bell and Independence Mall, the Art Museum, and all the other wonderful attractions we have. And I believe that we ought to keep that in mind that, you know, what we're talking about -- and the reason why I believe tourism was not affected was because people come for the attractions that are available in those cities.

Now, having said that, they did not

compare Philadelphia with Los Angeles because it probably -- for very good reasons. They have actually a better measure, which is the before and after study. They knew when the smoke-free ordinance was going in place, they knew what hotel revenues were before the ordinance happened, and they measured it after the ordinance. And they were able to document increases in tourism revenue.

And the point that you pointed out, I think, is perfectly true. People come because they want to come to the attractions, the economy's doing better, and people are having more discretionary money to do tourism.

I truly believe that if we were to pass a smoke-free ordinance, the more factor in terms of whether restaurants will succeed or not is the economy itself and whether we have a recession or times of prosperity.

COUNCILMAN DICICCO: Well, I guess the point I was making was that people do still have choices. So, I mean, you can make a choice to go to a restaurant that has a prohibition on smoking.

I live on Eleventh and Federal, and

within a block of my house, there are two restaurants. One has always been a nonsmoking restaurant, and it's about three years old. A similar restaurant a block away serves the same kind of food, same kind of ambience, you're allowed to smoke there. Both of them do well.

People make choices. Sometimes they go to Christian's -- I'm giving a plug for the nonsmoking restaurant -- and sometimes they go to Felicia's at the other end of the block. And there's the same people you'll see from time to time going to one restaurant one night and the other restaurant on the other night, knowing full well that in one restaurant, you can't smoke. And for the nonsmokers, they go outside. But the same nonsmokers go into Christian's eventually wind up in Christian's restaurant (sic), and they'll ask for a seat away from the smoking area.

So I was just concerned. You know, again, I think it's choices. And people decide to go to Los Angeles, and the air is unhealthy, whether there's smoking or nonsmoking, and it doesn't discourage people.

(Applause.)

COUNCILMAN DICICCO: I will relish that applause, because at 6:30, I'm meeting with folks 13th and Callow Hill who may have to be relocated for a stadium, and I think that's the last round of applause I'll get today, so I'll savor that for the rest of the night.

(Laughter.)

COUNCILMAN NUTTER: Councilman, if I could --

COUNCILMAN DICICCO: Thank you.

COUNCILMAN NUTTER: Sure. If I can just add to the record and the question you raised, I'll be glad to give you a copy of the study that Dr. Tsou mentioned. It's entitled "Tourism and Hotel Revenues Before and After Passage of Smoke-Free Restaurant Ordinances, by a Dr. Stanton Glantz, which was published in the Journal of American Medical Association on May 26, 1999. Dr. Tsou is correct. That was the conclusion of that particular study. There are a number of others, which I'd be glad to share with you and any other Members or anyone else.

There was a second one done, "An Analysis of Taxable Sales Receipts. Was New York

City's Smoke-Free Air Act Bad for the Restaurant Business?" The conclusion of that particular study is that the study found that real taxable sales from eating and drinking places increased and hotels in New York City increased by 2.1 percent and 36.9 percent, respectively, compared with levels two years before the smoke-free law took effect. During the same period, real taxable drinking sales for eating and drinking establishments and hotels in the rest of the state experienced a 3.8 percent decrease and a modest 2.4 increase in sales, respectively.

And there are a number of other studies that are a part of the Journal of the American Medical Association, which those studies actually studied real taxable sales as opposed to just telephone surveys, asking people what they think over the phone.

COUNCILMAN DICICCO: Thank you.

COUNCILMAN NUTTER: Sure.

COUNCILMAN DICICCO: Thank you, Doctor. No further questions.

COUNCILWOMAN TASCO: Any other questions?

(No further questions.)

COUNCILWOMAN TASCO: Thank you very much for your testimony.

The Chair calls on Dr. James Repace and William Godshall.

(Witnesses come forward.)

DR. REPACE: Good afternoon, Chairwoman Tasco and Mr. Nutter and members of the Council. I am James Repace, and I am a secondhand smoke consultant. I'm testifying here on this bill, in support of it.

I've served 11 years at the United States Naval Research Laboratory in Washington, DC as a research physicist and for 19 years at the United States Environmental Protection Agency as a senior policy analyst in the Office of Air and Radiation. And I also served on loan for 18 months to the United States Department of Labor to help OSHA draft its rule to regulate secondhand smoke in the workplace.

I hold a master's degree in physics. I've published more than 50 scientific papers on the hazards, exposure, dose, risk, and control of secondhand smoke. During my tenure at the

Environment Protection Agency, I testified before both Houses of Congress, on the Health and Environment Subcommittee, the Aviation Subcommittee on behalf of federal workers regarding secondhand smoke.

After retiring in 1998, I became an international secondhand smoke consultant, and I have provided advice to many national governments and to many states throughout the United States. I've testified also before several city councils, including New York, and I gave advice to the health boards in the cities of Montreal and Toronto.

I'd like to amplify some key points in my written testimony, which you have there. The first is of these is that secondhand smoke is toxic waste. It contains six regulated hazardous air pollutants, 43 known carcinogens, 47 chemicals designated as hazardous waste by the EPA, and more than 100 other substance classified as toxic in handbooks on industrial toxicology.

Every single major federal health occupational environmental health authority in this country, ranging from the Surgeon General to

the Environmental Protection Agency to the National Cancer Institute, the Occupational Safety and Health Administration, the National Institute of Occupational Safety and Health, have declared secondhand smoke to cause cancer and other diseases in nonsmokers. Respected medical and scientific authorities, ranging from the American Medical Association to National Academy of Sciences, have endorsed those findings. This year, the National Toxicology Program of the National Institute for Environmental Health Sciences, in its ninth report on carcinogens, has listed environmental tobacco smoke as a known human carcinogens, along with asbestos, coke-oven emissions, and mustard gas.

You are here today respectfully considering a measure to extend the protection of public and worker health against the toxic diseases caused by secondhand smoke in the workplace and institutional and hospitality industry venues. Decisions like this are widely faced by city councils in this country because massive lobbying by the tobacco industry has stymied federal and state regulatory efforts. And

so the battlegrounds for clean indoor air has become the cities and towns of this country.

In arriving at a decision at the local level, legislators are faced with many risk benefit decisions. How serious is the risk? what control measures are viable? what will the economic impact be on the city?

You've heard testimony from the Health Commissioner that 3,000 American die annually from lung cancer induced by secondhand smoke. Credible published estimates by Dr. Wells of Kennett Square, Pennsylvania, placed total nonsmokers' mortality from passive smoking at 60,000 deaths a year, and those numbers have bee endorsed by the American Heart Association. The Occupational Safety and Health Administration itself, in its proposed rule in 1994, estimated that secondhand smoke caused as many as 700 nonsmoking workers to die every year from lung cancer from exposure to passive smoking on the job, and as many as 13,000 to die from heart disease.

Scaling these data to the City of Philadelphia, I estimate that 327 Philadelphians die annually from secondhand smoke exposure.

Moreover, I've measured levels of the nicotine metabolite cotinine in the urine of restaurant workers in Montreal on a consulting job I did for the Montreal Regional Health Board in 1998, and we did a press conference up there in May 1998, and after that, the Province of Quebec voted to ban smoking in restaurants, and that ban went into effect this year.

Now extrapolating from the levels that I measured in those restaurant workers in Canada and in taking into account the lower smoking prevalence here in Pennsylvania, I estimate that about 8 percent of Philadelphia hospitality workers would die from secondhand smoke exposure in their workplace during their working lifetime. This Council can act to prevent these deaths by voting to make hospitality venues smoke-free. Workers should not have to trade their health for a paycheck.

Although public health should never be balanced against private profit, this Council will hear testimony that restaurant profits have deceased where smoking has been banned. But the record does not support this, as the Health

Commissioner pointed out. In the Journal of Public Health and Management and Practice, between 1993 and 1997, New York City sustained an 18 percent increase in restaurant employment; whereas the rest of the state experienced only a 5 percent increase. This difference can be attributed to the existence of the New York City Smoke-Free Air Act. The record shows that New York suffered no job losses in the restaurant industry.

In 1998, the City of Boston passed a similar ban in smoking in restaurants, and restaurant smoking bans have proliferated throughout the United States and through the State of Massachusetts. The States of California, Vermont, Utah and Maine have all banned smoking in restaurants, as did the State of Maryland, although the state legislature forced us to capitulate on bars and restaurants with bars.

Let's examine in particular the California experience. In my written testimony, in Appendix 3, I've shown data that are reported by the California Department of Health based on taxable sales of -- in the retail restaurant and bar business. Objective sales tax data show

conclusively that the California retail food and beverage industry experienced a significant surge in revenue after smoking was banned in restaurants in 1995, and another surge when they banned smoking in bars in 1998. And if you look at that figure, you'll see that up until the 1995 smoking ban, the sector of the industry which sold hard liquor, beer, and wine, as well as food -- that's the center graph line there -- was completely flat. In 1005, it went up, and that, you can attribute exactly to the smoking ban.

Now, what happened was, the sector that included restaurant and bars and stand-alone bars had 23 percent higher revenues in the first quarter of 1999 than it did in the first quarter of 1994, which was the last year when smoking was permitted in all of those venues. The non-hard liquor and non-alcohol sectors enjoyed even larger increases in sales -- 29 percent and 35 percent, respectively.

These are the most objective, most recent, and definitive official data available. Moreover, the California State ban occurred only after 40 major cities and towns had already banned

smoking locally, showing that even when a city bans and the surrounding suburbs do not, the ban does not decrease revenue.

Why don't smoking bans decrease revenue? In the same issue of the Journal of Public Health Management and Practice, Lois Biener at the University of Massachusetts, showed that in a study of Massachusetts adults, that a number of nonsmoking patrons who avoid smoking restaurants and bars in 1996 exceeded by 80,000 the total number of adult smokers in the state. The message is clear: nonsmokers don't like their meals and drinks with a secondhand smoke chaser.

This Council will hear testimony claiming that secondhand smoke can be controlled by ventilation or air cleaning. I can assure you that this is totally bogus. OSHA stated flatly in 1994 that the carcinogenicity of secondhand smoke eliminates ventilation as an engineering control. OSHA proposed a smoking ban -- not ventilation or air cleaning.

The American Society of Heating Refrigeration and Air-conditioning Engineers (ASHRAE) in its 1999 edition of the ASHRAE

Standard, which represents accepted engineering practice in the ventilation profession, acknowledged that numerous cognizant authorities have determined that secondhand smoke is harmful to human health and has removed any mention of ventilation as a possible control measure for tobacco smoke.

Those misguided individual in the tobacco and the hospitality industry, who propose ventilation, are really saying that you should take their word over the word of cognizant health authorities. When you need public health advice, it's always wiser to consult the Surgeon General rather than the trade association for booze or tobacco.

The fact is that secondhand smoke is so toxic that it would take tornado-like levels of ventilation to control it to de minimus levels. The toxic waste of secondhand smoke in restaurants and bars cannot be controlled by ventilation gimmicks, anymore than toxic waste in lakes and rivers can be controlled by filtering them or diluting them with extra water.

The ventilation argument cited by the

license beverage industry do not give objective measures of smoker density or ventilation rates, measures of air quality or measure of risk from any of the diseases of secondhand smoke before and after ventilation upgrades. Without this, their statements are meaningless. They don't tell us how much toxic waste is okay to breathe. We don't drink tap water unless it tests safe. Who's going to test the air in restaurant so it's safe to breathe if we use ventilation. Is the City of Philadelphia going to set and indoor air quality standards for secondhand smoke in every restaurant and bar in the City?

This Council is in the front line in the protection of worker health and public health against the diseases caused by secondhand smoke. This Council should vote accordingly to validate the trust that the people of Philadelphia have placed in new in protecting their health and welfare. Only smoke-free buildings can accomplish that goal.

Thank you, and I would be happy to answer any questions.

(Applause.)

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COUNCILWOMAN TASCO: Mr. Godshall.

MR. GODSHALL: Good afternoon. Thank you for allowing me to testify on this critical public health issue. My name is Bill Godshall. I founded and serve as the Executive Director of SmokeFree Pennsylvania.

Our grassroots efforts were instrumental in the enactment of Pittsburgh's and Erie's Smoking Pollution Control ordinances and Pennsylvania's Clean Indoor Act more than a decade ago. And our organization has initiated and assisted with thousands of smoke-free policies across the Commonwealth.

SmokeFree Pennsylvania thanks Councilman Nutter and the seven Councilmembers for sponsoring this paramount public health proposal and we strongly urge City Council to strengthen it and enact it into law.

More than a decade, our efforts to protect people from involuntary exposure to poisonous tobacco smoke were among the first to be targeted for sabotage by the tobacco industry, which spent millions of dollars opposing enactment of Pittsburgh's ordinance, trying to preempt it

with state legislation, and then by trying to take over implementation of the city's new law, which was at the time, the most protective of cities in the northeast part of the country.

Ironically, during the week of Pittsburgh's city council's vote on the ordinance, the tobacco industry released a push poll that appeared on the front page of the newspaper that it had conducted, claiming that if the smoke-free ordinance in Pittsburgh was enacted, it would cause economic devastation to the region. Since then, the tobacco industry has almost certainly almost spent more than a billion dollars to oppose smoke-free proposals in city after city and in state after state.

Not only is secondhand smoke poisonous, but public opinion polls are finding that a growing majority of people support smoke-free workplaces and public places. In 1994, Zagat, one of the nation's leading restaurant and hotel guide publishers conducted a survey and found that 70 percent of New York diners, 79 of San Francisco diners, and 81 percent of Los Angeles diners agreed that smoking should be banned in

restaurants. And at the same time, the tobacco industry and restaurant associations in those cities were adamantly opposing the enactment of the smoke-free laws, which are now in place in all of those cities.

A 1995 statewide random survey of adults conducted by the Pennsylvania Department of Health found that half of those surveyed said they would be more likely to eat in a totally smoke-free restaurant, while only 14 percent said that they would be less likely to eat in a totally smoke-free restaurant. A statewide scientific in New Jersey that was conducted by Rutgers University just this past March found that 83 percent of New Jerseyans want workplaces to be smoke-free, and 67 percent want restaurants to be smoke-free. This survey also found that 40 percent of nonsmokers and 11 percent of smokers avoid restaurants because of secondhand smoke exposure.

Among the millions of secret tobacco industry documents made public two years ago by Minnesota's historic tobacco settlement, we have several dozen documents from different tobacco

companies that outline a highly sophisticated nationwide and even worldwide strategy to deceive owners of restaurants, bars and hotels into opposing smoke-free legislation. These documents also expose strategies to coalesce restaurants, bars and hotel into lobbying against the legislation.

If the tobacco industry cannot convince the existing restaurant and tavern associations to oppose smoke-free legislation, the tobacco industry will invent its own phony restaurant association, as has occurred in Beverly Hills, California, and in Vermont, when they were considering smoke-free legislation.

Much of the tobacco industry's deception has occurred through the development of enormous databases and periodic bulk mailings that are sent to tens of thousands of restaurants, bars, and hotels across this country, as well as their trade associations. After reading a dozen mailings that contain headlines like "Can you Afford to Lose 30 percent of Your Business?" and "Restaurants Shut Down After Smoking Ban," it is understandable why many restaurant and bar owners

fear clean air laws. Then, after spreading their propaganda, tobacco companies will conduct unscientific surveys and push polls of these very businesses and then widely publicize that a majority of restaurant owners they surveyed think that smoke-free policies will harm their business.

This pattern has occurred in numerous cities in California; New York, NY; Boston, Massachusetts; Boulder, Colorado; Arlington, Texas; Madison, Wisconsin; various counties in North Carolina; as well as the entire states of the California, Vermont, Maryland and Maine. But restaurants in these locations have gone smoke-free, and there is no evidence that restaurants, or any other businesses, have suffered economically. In fact numerous studies that evaluated the tax returns of restaurants in many of these locations found that the revenues have increased, with no studies finding a decrease in restaurant revenues.

The reality is that smokers continue eating out in restaurants; they just stop smoking in the restaurants. And many more nonsmokers who

currently boycott smoke-filled restaurants will go to restaurants when they know their smoke-free. And just as restaurants are required to abide by strict public health laws to provide safe food and water, they should also be required to provide safe are to breathe.

Regarding other workplaces, while nearly every large employer, except tobacco companies, already are smoke-free, employees in many small companies continue to be involuntarily exposed to secondhand smoke in the workplace. Our organization has received complaints from hundreds of these employees, many of whom have had to choose between a paycheck or suffering from a chronic illness caused by breathing in tobacco smoke all day at work. And many employees have been fired for simply requesting a smoke-free workplace. This proposed ordinance will provide tens of thousands of additional Philadelphia workers the same occupational health protection that is now enjoyed by the rest of us.

And upon careful review of the proposed ordinance, SmokeFree Pennsylvania strongly urges an amendment to phase out the collective

bargaining exemption after existing contracts expire. Labor unions have been at the forefront of advocating workplace health safety standards, and it would be a mistake to exempt from this ordinance.

Another amendment we urge you to consider require bars to fall into compliance with this ordinance after one or two years. Employees and patrons of bars deserve the same protection from secondhand smoke. This has successfully occurred in the State of California, and bars have not suffered economically, despite predictions by the tobacco industry to the contrary.

Another issue I would like to bring up is the relationship between this proposed ordinance and the existing State law, which was amended to the Pennsylvania Fire and Panic Act in 1998. Although that bill was hijacked from health advocates by the tobacco lobbyists and was rewritten to preempt local governments from enacting more protective smoke-free laws, the local preemption doesn't apply to Philadelphia because it is a first-class city that is exempt from the Fire and Panic Act. A concurring legal

opinion was issued in 1994 by then-Acting City Solicitor Joseph Dworetzky.

I would also like to briefly address the implementation of this ordinance. In city after city, experience has found that self-enforcement occurs in the overwhelming majority of businesses. Following initial publicity of the law taking effect, the bulk of enforcement calls and complaints occurred during the law's first few weeks and months.

Under Governor Ridge's tobacco settlement proposal, there will be settlement funds provided -- made available to the Philadelphia Health Department to fund what modest enforcement measures are necessary to ensure compliance with the ordinance.

Thank you. And I'll be pleased to provide Councilmembers with any of the many documents that I've referenced, and I'll be pleased to answer any questions.

(Applause.)

COUNCILWOMAN TASCO: Thank you very much.

Are there any questions from members of

the committee?

COUNCILMAN NUTTER: Just one.

Dr. Repace, can you share any information about a study that's been raised on a couple occasions out of a laboratory, I think, run by the U.S. Department of Energy, Oak Ridge. Do you have any information about that?

DR. REPACE: Yes. The group that conducted that study did a 16-city study of exposures of people to tobacco smoke, and that work was funded by the tobacco industry. That group at Oak Ridge that does tobacco has been funded -- it was part of the Safe Cigarette Group in the 1970s. When the government stopped being interested in safe cigarettes, the tobacco industry picked up the funding.

And it isn't a government lab; it's run by a university. And so, they can get contract money from wherever they want, and they've been picking up contract money first from the Council for tobacco Research, which was denounced by federal judges as a propaganda organ of the tobacco companies.

And then later, when the Center for

Indoor Air Research took over the funding of work and environmental tobacco smoke, that was also funded by the tobacco companies, and this was contract work carried out for the tobacco companies. It was pure and simple work that they commissioned and that they hoped would support their point of view.

COUNCILMAN NUTTER: Okay, thank you.

COUNCILWOMAN TASCO: Any further questions?

Councilman Ortiz.

COUNCILMAN ORTIZ: Mr. Repace, when you state that there's no safe level of exposure, could you expand on that for me.

DR. REPACE: Sure. There has never been a safe level noted for induction of carcinogens -- of cancer. Any carcinogen can that's an initiator will initiate cancer and places you at risk.

Obviously, there can be a level of risk from a carcinogens which could be trivial. It doesn't happen to be the case for exposures of people under typical conditions of smoking and ventilation in buildings. The exposures are

thousands of times the level of de minimis risk.

COUNCILMAN ORTIZ: On the studies that you have in terms of the economic upsurge in terms of restaurants and bars in California and in other places, what is the data, really the empirical data that says that this is cause and effect that is involved? Or is it a part of the economic boom that the United States has enjoyed over the last five six years at the same time?

DR. REPACE: Well, obviously, in some cases, you can't tell whether it's the economic boom or not. If you look at the data that I've shown, it's remarkable that when the smoke-free restaurant ban went into effect, the retail industry was pretty flat in the liquor, wine and beer sector, and then it took off.

What you can say for sure is that there's absolutely no evidence of a decline in revenues, and this is what people are afraid of. Well, where is the evidence around the United States that it's happened anywhere to decline? It hasn't happened. And as I mentioned, the reason it doesn't is because restaurants, and particularly bars, have lost an awful lot of

nonsmokers because they don't go there, they stay home, they find our places to go. And so when a ban comes into effect, a lot of these people come back because they now realize they can go a restaurant and not come away with their eyes burning or with their clothes smelling of tobacco smoke.

So if you lose a few smokers, you pick up a lot more nonsmokers, and the reason for that is simple: nonsmokers outnumber smokers in this state 3 to 1, and in California by 4 to 1. In Massachusetts, it's the same as Pennsylvania. And when you ask people, do you avoid these places? they say, Yes, we do, we really do avoid them. We don't go. And that's really the reason that you won't find an effect.

But even if there were an effect, even if industries did lose money, it has always been the case in this country when we regulate pollutants that can kill people, we do that irrespective of whether there's going to be an economic impact on industry or not. What we're saying is that despite the fact that there is no economic impact in evidence anywhere in this

country, what we've got are fears by local restaurateurs and bar owners that they are going to lose money.

Surely, if you go into any bar in the United States where smoking is allowed, you're going to find mostly smokers there. And that tells you something: the nonsmokers don't go there. And the California experience has shown -- and I've been there and I've experienced the smoke-free air in restaurant and bars in California, and it's wonderful. It's enough to make you want to go back.

COUNCILMAN ORTIZ: And the technology today, you say that there's no technology that is efficient enough to be able to create areas within restaurants, through ventilation and other apparatus that may be installed, that it would be able to -- that people who smoke could avail themselves of that?

DR. REPACE: The issue, Councilman, is not the efficiency. You can make air cleaners with very high efficiency for particles -- not very high for gasses. And you can put in ventilation in a place and lower the concentration

of the tobacco smoke.

The question is, how much is needed? You need so much that you will create a tornado inside of a building to lower the concentration to acceptable levels. It's just not possible to do that. And then you have to ask yourself a question, Why would you want to do that, why would you want to be exposed to toxic waste? Nobody wants to do that.

The fact is, we've all grown up in homes and we've worked in businesses where smoking was common, and we're used to it. And we didn't know when we were young that it was harmful, but science marches on. We now know that it's very harmful and we need to get rid of it. And we know that engineering fixes won't work.

The only thing that works with toxic waste is a total removal. Tobacco smoke, the only safe way of disposing of it is in a sealed container or by putting the smoker outdoors. There is no middle ground.

COUNCILWOMAN TASCO: Thank you very much.

DR. REPACE: Thank you.

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COUNCILWOMAN TASCO: All right, thank you.

(Applause.)

COUNCILWOMAN TASCO: We'd like to call on Dr. Robert Simmons, Dr. Howard Kessler, and Reverend Jessie Brown.

(Witnesses come forward.)

COUNCILWOMAN TASCO: Good afternoon. Please state your name for the record.

DR. SIMMONS: Good afternoon. My name is Dr. Robert Simmons, and I am representing the American Heart Association of Pennsylvania and Delaware. I also want to mention that -- and would like to make a comment initially about that. Prior to coming to the Mid-Atlantic region -- I'm from California, and I was the coordinator of California's smoke-free law, Assembly Bill 13, so I have quite a bit of information about the acceptance of that in the restaurant industry, the implementation, the enforcement, etc.

I'm not going to read from my --

COUNCILWOMAN TASCO: Why don't you tell us about that because we already have this information. We've had two hearings on the

effects of secondhand smoke, and then this morning on the tobacco settlement.

DR. SIMMONS: I do not plan to say anything about that; that was just for the record.

Let me just mention, and I want to make a couple points overall, but I do want to mention the experience from California because back in the early '90s, when this was proposed, we did work with the California Restaurant Association and with the various beverage association, etc., to pass the California law that took effect January 1, 1995. There was a two-year time period of allowing the bars to be exempted for that for a two-year period. It got extended for one additional year, so there was a three-year lag between when the restaurants became totally smoke-free and when bars became totally smoke-free.

And, of course, we experienced all of the propaganda from the tobacco industry and the fears and the headlines in the Los Angeles Times about how this was going to destroy business in California, and people were going to leave the state because they were not going to be going to

bars and restaurants.

The data clearly has shown -- first of all, the focus for the first year was predominantly in the area of education and less so on enforcement. But what was interesting is, the California Restaurant Association was a strong supporter of the ordinance. Remember, there had already been 40 city ordinances, and what they wanted was a level playing field and felt that the best thing to do was to make the entire state smoke-free as far as the restaurants are concerned.

The data, which was already reported by Dr. Repace, indicated that if anything, there has been an economic upsurge in bars and restaurants in California, particularly in the restaurant industry. And not to say necessarily that it's attributed completely to environmental tobacco smoke, but certainly, compared to other states that do not have a statewide ban on that, the data has been very clearly.

Within the bar industry that took effect in 1997, there was also a period, a significant period, of 6 to 12 months where it was

focused much more on education. There was a lot of reports of concern about bars, about that restriction. That has changed over the past two years, with the bar Industry in California. Generally, there's an acceptance of that. It's predominantly self-enforcing.

The state legislature was very concerned about how much money, are we going to have police to police tobacco in our bars and restaurants? That has not been the case. There is some money allocated in the state level to help with education and enforcement of that, but it is predominantly a self-enforcing state law.

Subsequent to that, there now are other states -- of course, Utah, Vermont and Maine and others -- that have now restricted smoking entirely in restaurants.

COUNCILWOMAN BROWN: You mentioned that at the initial start of the implementation of the new law, education was the focus. What does that mean?

DR. SIMMONS: That meant that not only was there a lot of public education about that and the reason for the law, but there was a

significant amount of retailer education -- information about the law, what the enforcement is, what is expected of restaurants, what information could be provided by the state to assist them in the implementation.

Some of the restaurant owners certainly initially had concern and bar owners about, What if you get a patron who refuses to leave or just says, No, I'm entitled to smoke, and I'm going to smoke here, and how do you deal with that type of enforcement, what agencies? They clearly were concerned about getting involved in the enforcement; that's not their business.

So that's the type of education that occurred over time. And now one can say -- and I've talked with colleagues just last week in Denver at a national conference and with my colleagues in California, and their view of that from the state health agency is that there's been minimal problems of that over time.

COUNCILWOMAN BROWN: Now, another factor of the movement of that bill, you indicated that the various worlds came together at the front end, the various dissenting worlds came together

at the front end to work through how those involved could speak to the needs of both sides.

DR. SIMMONS: Right. Let me mention some of those key players in that because I mentioned the California Restaurant Association, but let me mention a very powerful group, and that's the California League of Cities. That's 463 cities of the entire state. That was also a main supporter, and they were the leading educator of that law when that took effect. So there was that support.

The alcohol industry did not support the initiative initially. It was the Restaurant Association of California that was the main supporter of that.

COUNCILWOMAN BROWN: That supported the --

DR. SIMMONS: Completely, very much so. And the President of the Restaurant Association testified front of the State Assembly in California in 1994 for that law. I was there for that testimony.

And what they basically reached -- the conclusion of the Restaurant Association was that

they did not feel that it was going to hurt their business. They wanted a level playing field across the state. They actually, when the initial studies from the University of California - San Francisco had reported that not only is it cost-neutral, but actually, you don't have to deal with smoking and nonsmoking, you have less expenses on your fire insurance, you have less expenses of cleaning bills, and that it actually would be a benefit to restaurants to not have to deal with those issues.

So that was the arguments that the California Restaurant Association used to support that.

COUNCILWOMAN BROWN: But would you say that implicit in the success of that bill was the universal application of the law?

DR. SIMMONS: I would say certainly that had, you know, significant impact on making it a state law. Again, there were already 40 local ordinances, local jurisdictions, including Los Angeles, that had certain restrictions on that.

COUNCILWOMAN BROWN: Thank you.

DR. SIMMONS: Mm-hmm.

What I do want to emphasize is just a key points very quickly.

Number one, environmental tobacco smoke is no longer considered a public nuisance. We are basically about one generation 20 to 25 years in the data on environmental tobacco smoke as we were on cigarette-smoking from the first Surgeon General's report. Initially, the discussions and the Surgeon General's report talked about environmental tobacco smoke as a public nuisance. Well, it's bothersome to people. We now have very different data, and Dr. Repace referred to that.

As the science has progressed now, in the year 2000, it is no longer just a public nuisance; it is a public health hazard. And from the American Heart Association, we are very, very concerned when we look at the estimates of the cardiovascular deaths due to environmental tobacco smoke. That means that these are people controlled, who are not smokers. They either live with smokers or, in most cases, they're in work environments where there's smoking. That the estimates are between 35,000 and 62,000

cardiovascular deaths in this country. That is astounding to us, and we are very concerned about us. So it is not just a nuisance anymore; it is a public health threat. That's the first point I wanted to make.

Second of all, I wanted to emphasize that as far as the level of exposure, we have gotten much more sophisticated, as Dr. Repace referred to, in the level of exposure. Initially, the initial studies looked at spouses, nonsmoking spouses of spouses who smoke. The second level of studies looked at the workplace. In fact, a new study from the current issue of the American Journal of Public Health had just came out -- it was interesting, in California, because they actually showed with a study of over 4600 smokers in worksites in California, since the 1995 law, a significant number of those, compared to other workers in other states who don't have that law, have actually attempted to quit smoking and have been successful, looking at six months of complete abstinence. So that's an extra benefit to such laws, that a number of people, hopefully, smokers are going to make the decision "I'm going to make

that effort to quit," and hopefully, a lot of them will be successful in that activity.

So that's the second thing. We're much more sophisticated. We now look at cotinine, which is that metabolite, a major metabolite of nicotine, and realize that cotinine exists in the blood of people who have a casual exposure. That may be a one-hour exposure at a restaurant for up to three days. Now, is that a health risk? We don't know if that's a pure health risk, but the fact that you can measure cotinine, a metabolite of nicotine, in the blood of somebody who has had a casual -- this is not an eight-hour exposure daily, it's a casual exposure -- is very significant, and that's why we feel we have to take measures to protect the public's health in doing so.

I want to finally mention that -- since it was already mentioned about not eliminating, I want to emphasize the aspect of smoking as a unique behavior. Smoking is like any other -- is unlike any other behavior. And when you hear of stories of, Well, if we're going to do this, then we're going to restrict people having sugar, and,

you know, they can't eat their Tasty Kakes, and they can't go and have Cokes and they can't do that and they can't add salt to their meat, that is totally different.

This is a very unique behavior. The automatic use of this product by smoking -- not smokeless -- automatically pollutes the air of the individual smoker; but more importantly, it also pollutes the air of the people around them.

So what has happened now, in the year 2000, is that local jurisdictions, state governments, and federal governments, to their capability, have made the statement, that given the data we now know, as we didn't have 20 and 30 years ago, the right to breathe clean air must supercede the privilege for a smoker to pollute the air.

(Applause.)

DR. SIMMONS: And, I guess, in reference to you, sir, in your example, which -- Councilman, your example of -- I think it was a very good one. Two neighboring restaurants; one is currently smoke-free and the other is not. I understand where you said, Well, the person can

choose, they can go to the one that's smoke-free or they can go to the one that's smoking.

I would like to rephrase that question and ask, why does the person that is a nonsmoker have to make that choice? why does a person have to put themselves at risk and being uncomfortable to that environment? Shouldn't that be the fact that the individual who's choosing, as a privilege, legally so and rightfully so, to smoke, shouldn't that individual go outside and do that and not pollute the air of the other person?

So I want to just rephrase that because I think, in our feeling, we think it's the smoker who has to take that step to change rather than the individual who has no choice but to involuntarily breathe that smoke-filled air.

Thank you very much, and I'm willing t take questions.

COUNCILMAN ORTIZ: Doctor, I'm a nonsmoker, and I hate it vehemently, but there was one caveat in terms of choices as we speak that has to be taken into consideration, is that smoking although harmful, and everybody agrees to it, the harmful effects, it is not prohibited

conduct. Smoking and cigarettes are not prohibited narcotics within this society as we know it.

So in terms of choices, when you have it, you're saying to the individual -- and this is a very, very hard situation here, because you are saying to the individual in essence, Your activity is legal. And if it is legal, then you should be able to perform it wherever you want --

(Applause.)

COUNCILMAN ORTIZ: -- because it is legal.

And I know what the health costs are because we suffer that, and we've been having hearings. And either as a society, I think we're going to have to come to grips with it. Just like we have to come to grips with the sales of guns in this society, we have to come to grips with this situation because you cannot -- I do not believe -- it hasn't gotten to the Supreme Court yet, but I think it will, that you can say to somebody that this is a legal activity, but that other person can prohibit you from exercising that right.

DR. SIMMONS: Well, if I could respond

to that. I fully understand what you're saying. What we're really saying and what you're hearing today and you're going to hear more of, is that this is a unique behavior. And let me separate the two.

Smoking tobacco and chewing tobacco, let's take those two behaviors. One behavior is -- both are legal for people over 18. One behavior, the chewing tobacco, that individual is exercising their choice. It could be in any location. The only risk is where they spit that chewing tobacco out and what that means environmentally, but it does not impact on anybody else, except themselves.

The difference is that this is a very unique behavior. The difference, sir, is that this behavior impacts on everybody else around them. We share the same air space. So that's the same difference here.

If we were talking about chewing tobacco, we wouldn't be here today, but we're talking about a behavior that automatically pollutes the air of others. And when it comes down to that behavior, the public health must

supercede anybody's choice to smoke.

(Applause.)

COUNCILMAN ORTIZ: I don't disagree, I don't disagree, but then you have to -- then you have to put that into legislation that prohibits the conduct.

DR. SIMMONS: Well --

COUNCILMAN ORTIZ: And prohibits -- and prohibit the item.

DR. SIMMONS: I would say this -- and that's always a challenge for City Council, is that, in general, those prohibitions -- you sort of make the distinction between indoor environments traditionally and outdoor environments. Is there a risk of outdoor exposure? Yes. Somebody sitting at a baseball game or whatever at an outdoor environment, a concert, and the person next to them smoking they are inhaling secondhand smoke, but generally, the distinction that government make is that I can't control every place, I can't control all environment, but we can control indoor public environment.

And that's the difference and that's

the choice to make.

(Applause.)

COUNCILMAN ORTIZ: Okay, okay.

COUNCILMAN NUTTER: If I could just also add that it's not like we're examining the prospect of prohibiting smoking in certain places for the first time. There are currently laws on the books, passed in the late '40s, that prohibit smoking in certain places today. Mayor Rendell signed an executive order in 1993 prohibiting smoking in all public facilities. This is not new.

And just like cigarettes are a legal product, and if people want to smoke, that is their choice, that is their business. I'm not against smokers. But what I am for is clean air and the ability to inhale it and not be injured by someone else's choice.

Alcohol is a legal product, but we do not let people consume the legal product and then drive their car. They are a danger to themselves and to everyone else around them, so what we are talking about is making the distinction between if you want to smoke, fine, smoke to your heart's

content but don't do it in such a way that you injure someone else's health. And I think that is really the only issue.

(Applause.)

COUNCILWOMAN TASCO: Thank you very much.

Reverend Brown?

REVEREND BROWN: I'm Reverend Jessie Brown, Executive Director of the National Association of African-Americans for Positive Imagery, but more to home, I'm one of the members of the Uptown Coalition for tobacco Control and Public Health that stopped R.J. Reynolds ten years ago from coming in and trying to diminish the quality of life of Philadelphians by introducing a new cigarette, and we're going to stop R.J. Reynolds and Philip Morris this time from stopping us to trying to improve the quality of life in Philadelphia.

I've been listening to a number of the experts in this matter, and they've very adequately and eloquently talked about the secondhand smoke and its effects in our community. I want to take this issue -- well, to

be quite frankly, to take it home with us about this issue, because it's really about looking at our own families and our own communities and our own friends and making sure that we are doing everything we can to protect their lives.

I was concerned when the Philadelphia restaurant business community even put up any squabble, because I saw this as a great opportunity to target 80 percent of the population to come and participate in their business by promoting it as a family-friendly, family-safe, and a healthy environment. This to me would be a great opportunity for the business community to promote this city, as we've been trying to do, as a first-class city, not only in its facilities but in its quality of life in this community, particularly in our restaurants, making sure that they're smoke-free.

I was also thinking about the fact that they might consider the notion that the potential of lost productivity by having a fairly unhealthy environment and their employees losing time on the job, having to take care of illnesses that they may have picked up in their own business

environment, and I thought about the fact that maybe they could use this opportunity to attract even more workers in a tight labor market by advertising the fact that this environment they would be working in is even healthier than the ones that they might have worked in before.

I could see these advertising campaign saying to families, "Come on in. You can bring your child in who may have asthma because we have clean air here, just like we've got good food." I could see all of those kinds of opportunities.

So I was a little taken aback that the restaurant community would even challenge something that put them on equal footing with their competitors. Since everybody would have to do it, nobody would have any advantage.

And certainly I didn't think that they would be duped into believing in any way, shape, or form that somehow, they were going to lose business, when we've already heard time and time again that across this nation, when these bans have been put in place, businesses increase 'cause people came back to eat in their places. I suspect that if they're going to lose business,

it's probably because they have bad food, not because they didn't have any smoke in there.

(Applause.)

REVEREND BROWN: Philadelphia is a mecca of good eating all the way around, and I want us to continue to promote this in our tourism business and in our communities and in our families.

But then I thought about it even more at home. A restaurant was where I had my first job. Just like many young people, we find that the restaurant community is very open to opening their doors to training us and educating us and teaching us as young people how to be leaders in our community, and that's where we get some of our first experience on how to become productive citizens in this community.

I would think that their participation in making sure that this ordinance passed would be the same kind of leadership that they demonstrated when they taught me not only how to count but how to give good personal service across the counter. Those things are important in our community, that builds our community.

But if we continue to support that and -- and this is one of those pieces of legislation that I can't always say we have that, but this is one of the best common-sense and good-sense pieces of legislation that we've put out here, and you can't always say that about some of the bills that come around these days. But I would see that this would be an opportunity to promote us positively, promote our businesses positively, and to make sure that we take one more step in promoting and improving the quality of life in the neighborhoods.

When all of this is said and done, I think City Council and the City Councilmembers will be voting for this ordinance because it makes good sense, it makes good economic sense, it makes good family sense, it makes good community sense. And I know that all of us want to do the right thing. And to me, this piece of legislation will do that.

I have one last thing I wanted to do. To help others know, help our restaurant community know that we really do care about this, we're going to be distributing these little cards that

they can leave at the restaurant that says, "Please give us a chance to breathe smoke-free."

(Audience cheers and jeers.)

REVEREND BROWN: And we want the community to know that people would like to have that kind of atmosphere, so we are going to be distributing those, and they will then have an opportunity to gauge for themselves how we feel in the neighborhood and in our own homes.

Thank you, City Council, for this opportunity.

(Applause.)

COUNCILWOMAN TASCO: Thank you, thank you very much, Reverend Brown.

Could we have your attention, please. Everyone will have an opportunity to express their feelings about this legislation.

Dr. Kessler?

DR. KESSLER: Madam Chairperson, distinguished members of Council and those who are both opponents and proponents of the bill, I always have this -- or I seem to have the habit of being the last to speak, and what it usually does is steals my thunder and doesn't give me a lot to

talk about. And I certainly cannot speak as eloquently as the people who have come before me,.

But there are a couple things I'd like to say, and one of them is an observation on what I've been listening to for the last hour and ten minutes. And where I came from and where I grew up, we used to have this game of football, and we used to pile on, and people used to say, "It's time to stop piling on." I think more than enough has been said about this as a restaurant or beverage issue. And I would actually like to completely divorce myself from that. People are entitled to be employed and to run their business the way they want, and I have great respect for people who do that.

But I want to address the other issues in this bill brought by Congressman Nutter.

(Laughter.)

COUNCILWOMAN TASCO: Councilman Nutter.

DR. KESSLER: "Councilman" Nutter, I apologize.

COUNCILMAN NUTTER: Dr. Kessler, I have enough problems, okay?

DR. KESSLER: I apologize for that.

But I would like to remind everybody here that we're not just talking about restaurants; we're talking about enclosed public places, we're talking about access within 20 feet of any enclosed place where smoking is prohibited. We're talking about the workplace, we're talking about common areas in buildings -- lobbies, hallways, elevators, and hotel rooms.

And to make this -- or to have this degenerate into an issue of restaurant business, beverage business, I think, misses the point. And I think the point is that the vast majority of people in this room and the vast majority of Philadelphians and people who come to Philadelphia spend more time in the workplace and common areas than they do in some of the other venues.

And so I would like to bring this back to the middle ground, which is we need to look at ways to limit smoking in all of these areas, where our children go, where we go to seek support, where we go to be entertained, where we go to provide ourselves with the sustenance that gives us the feeling that this is a great place to live.

And from that standpoint, I'd really

like just to close by saying just a couple things. The first thing is that City Council has, since 1940 or the early '40s, had a very important role in limiting smoking in a variety of places. Our work isn't done, and it's not done for a couple of reasons. It's not done because we know more than we used to know. We know there's clear and incontrovertible evidence in the literature, in the medical legal literature, in the literature that has been promulgated by the Department of Health and Human Services, through the National Institutes of Health. There is enormous incontrovertible evidence that smoking is a problem.

And I think we owe it to ourselves and we owe it to our children and we owe it those who work in the City and live in the City to be focused on appropriate legislation that will limit those who have a choice and would like to go places from suffering the ravages of smoking.

Secondhand smoke is a clear and present danger. It's a danger to us, but I think, more importantly, it's a danger to children, as individuals have spoken before. It's a danger to

children who suffer from asthma, who suffer a higher incidence of infection. It's a danger to anybody who's around smoking.

And so my charge, again, is to get off of piling on. My charge is to remind the people in this room that this bill is designed to limit smoking in a variety of venues, and I would encourage City Council, both as a physician and as a volunteer for the American Cancer Society, to look at this legislation and look favorably upon it.

We owe it not only to ourselves, but we owe it to our children. And if we want to make this a better city for ourselves and for those who come here, it's incumbent upon us to look at that legislation in a favorable light and pass this so that public areas are a more pleasant place for all of us.

COUNCILWOMAN TASCO: Thank you very much for your testimony.

(Applause.)

COUNCILWOMAN TASCO: I thank you for bringing us back to point. It does cover many, many areas, and we thank you for that.

Any questions?

Yes Councilman?

COUNCILMAN ORTIZ: You said you were president of the aspect of the development of the California legislation in L.A.

DR. SIMMONS: I was not a president of the ordinance. I was the state -- I worked for the California Department of Health Services Tobacco Control branch responsible for implementation of Assembly Bill 13, the state law.

COUNCILMAN ORTIZ: And I think Councilwoman Blondell Reynolds Brown asked you as to the extent of the period of education that was involved and the involvement of all of the parties that were interested and that were affected by the legislation in terms of the development of it and then the promulgation and application of it. And how was that process, if you can describe it for us now.

DR. SIMMONS: It's hard to give you an exact date as to when that started, but I would estimate that it was about a -- before the law passed, it was probably a two- to three-year period at the state level, as more and more local

cities were passing their own ordinances, that a number of groups, and the League of California Cities, the Restaurant Association, as I mentioned, and a number of health organizations. So there was a number of -- there was some education that occurred beforehand.

A significant part of the education occurred after the bill was passed. There were brochures, a whole sorts of -- a phone number that businesses and the public could call for information. But it was after the bill actually passed and took effect that a number of people, because -- it wasn't -- and I also want to mention, it was not just restaurants and bars; it affected a whole variety of public places of access, very similar to the ordinance that is in front of you.

COUNCILMAN ORTIZ: And that was at the local level or at the statewide level?

DR. SIMMONS: Well, this was statewide, because there already had been 40 cities in the state who had had their own local ordinances restricting smoking in restaurants and in other public places.

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COUNCILMAN ORTIZ: In the State of California?

DR. SIMMONS: That's correct.

COUNCILMAN NUTTER: Dr. Simmons, I wanted to go back to that same point, as raised by Councilwoman Reynolds Brown and by Councilman Ortiz. So that the record is very clear, by the time the State of California got into this issue, many cities of California had already taken the issue and then it raised to the state level; isn't that correct?

DR. SIMMONS: That is correct. And, frankly, the reason why it was not addressed earlier at the state level -- one of the reasons, I might say -- is that the tobacco industry had put a lot of efforts in Sacramento with the State Assembly to prevent any type of statewide ordinance. So subsequently, the cities, starting -- Los Angeles's ordinance started in 1985. The individual cities decided that they were going to take initiatives, starting in the '80s and through the early 1990s, and eventually, with enough cities doing so, the Restaurant Association, the California League of Cities, and many other

players at the statewide level then decided that this should be a statewide law and not just levying it up to individual cities.

COUNCILMAN NUTTER: I guess part of the theory there was that it was more difficult for those various constituencies to try to effect or manipulate the legislative activities at the local level, as opposed to the state level?

DR. SIMMONS: That is correct. The efforts actually started back in the late '80s in Sacramento, at the State Assembly level, but after several years of trying to get some type of state law passed, the decision -- it was not able to do so, and subsequently, individual cities took it upon themselves to do so.

COUNCILMAN NUTTER: Thank you.

COUNCILWOMAN TASCO: Thank you all very much. We appreciate your testimony.

(Applause.)

COUNCILWOMAN TASCO: Our next panel will consist of Bruce Cooper, Garth Weldon, Andre Guillet, Allen Newman, and Stephen Starr.

(Witnesses come forward.)

MR. STARR: Hi.

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COUNCILWOMAN TASCO: Good afternoon. Would you please state your name for the record and begin your testimony.

MR. STARR: My name is Steven Starr. I don't have something written, it's in my head, so please forgive me if I sometimes stumble a bit.

I own several restaurants in Philadelphia: Buddakan, The Continental, Blue Angel and Tangerine, and we're soon to open two more -- one at the University of Pennsylvania which, is called "Pod," and we're working on a new one that I have not yet told anyone about. So our plans are to continue to grow and, hopefully, prosper here in Philadelphia.

I wanted to say that I don't think anyone here disputes the fact that smoking is bad for you, I don't think we could look you straight in the eye and not agree with that -- it's good for you. However, we are by no means manipulated by the tobacco industry. I think I have the same mistrust and disdain for the tobacco industry as all of you do, or any giant corporation with that much money invested into something. However, we are interested in our own businesses and the

future of this city also.

I do not believe that some sort of smoking ban or prohibition will destroy life as we once knew it in Philadelphia, but I do believe that you must be very careful on how far you go at this time. I think I would urge Councilman Nutter to be careful with this and not go too far too soon.

Eventually, some day, I believe there will be no smoking in the world, there will be no drinking of alcohol, maybe just a safe little pill to take the edge off, but we have to be careful.

COUNCILMAN NUTTER: Mr. Starr, I have no interest in that world.

MR. STARR: Okay, but I'm not trying to be funny, I really mean it.

I believe, however, we must be careful here. Philadelphia has started to catch up with the rest of the big cities in the United States. I don't believe we're quite there yet, but we're getting there. We're getting nationally known for our political leaders, we're getting known now for our restaurants, for our tourist attractions, and I just want you to be careful.

Most of my restaurants have no smoking in the dining rooms. I believe most restaurants can exist with no smoking in their dining rooms. I do believe that, like New York City, however, you must give people the option to smoke at the bar area.

Again, it's me cautioning everyone: not too much too soon. Let's watch and be careful. Once we get to that point, then maybe the next step could happen somewhere down the line.

I also believe, by the way, that ultimately, the political movement in this country is such that there will be smoking bans in the workplace, as there are now in restaurants, in bars, in nightclubs, but I just want to take it a little bit slower. I also am a firm believer that the market will dictate. I believe that you could have smoking in every restaurant and that the market will put those restaurants out of business. If I had smoking in Buddakan, for instance, and throughout the dining room, we couldn't stay open. Our customers would demand to have no smoking.

So, technically, I think that the market will dictate what will happen, but since I don't think that's the direction you're all going in, I just urge you to be careful and take it a little slow and let's have some compromises here.

Thank you.

(Applause.)

COUNCILWOMAN TASCO: Councilman Goode?

COUNCILMAN GOODE: Thank you. Madam Chair, I need to be excused, and I'd like to be recorded as voting in favor of Bill 314, along with any amendments adopted by a majority of this committee.

COUNCILWOMAN TASCO: Thank you.

(Audience cheers and jeers.).

MR. STARR: Councilman Nutter, may I say one other thing that I forgot to say? Everyone uses Los Angeles and California as an example. The one thing I want to remind you in terms of it not hurting business, in California, it's usually 65, 70 degrees, and people are able to go outside in the midst of their dinner and smoke. If they wish to. In Philadelphia, and in New York, of course, it's cold, our climate is not

really as good, and I believe that would that would create a problem.

COUNCILWOMAN TASCO: Thanks.

MR. WELDON: Good afternoon, Madam Chairperson and members of the Council. My name is Garth Weldon, and I operate the Prime Rib restaurant at the Warwick, on Locust and 17th Street, and thank you for your interest in my views on this matter.

My today, I also represent the Rittenhouse Row Association, which is a group of about 200 merchants in Center City. I represent the Rittenhouse -- did you hear that?

COUNCILMAN NUTTER: Yes.

MR. WELDON: Okay. I have never smoked cigarettes, but I have served many, many customers who do. I've been in the hospitality business long enough to remember the days when no restrictions on smoking was the norm. In fact, in the 1970s, I was a waiter at the Prime Rib in Washington, DC, and I remember waiting on Speaker Tip O'Neal, and as a waiter, I'd tried to gauge how to serve that (unintelligible) because the cigar was going throughout the meal, no matter

where he sat, anywhere he wanted to sit.

I think we've come a good way since then, though, toward offering a choice for people who want to smoke and those who do not. However, I'd hate to see us go to the extreme of having no place for our customers who smoke.

In Washington for many years now, our customers has for smoking or nonsmoking tables, and we accommodate them. The same is true for our place in Baltimore. The nonsmoking sections have grown from just a few tables to the majority of tables over the years. It seems now that a peaceful accommodation has been achieved. I believe that both nonsmokers and smokers have grown more considerate of one another -- and this is without the tornado being used on the air systems either.

There is a county just outside of DC, Montgomery County, where recently, a ban was put into place. The Washington Post reported that a lot of people are crossing over the line into the District to dine now from that county.

Now, when I came to Philadelphia almost three years ago, we spent $2 million to build a

250-seat steakhouse in the Warrick Hotel, and $200,000 of that budget went toward installation of a state-of-the-art HVAC system or air handlers that would provide 100 percent outside air to separate parts of the dining room and bar. By 100 percent, I mean the air is never re-circulated or mixed with the return air.

Since we've opened, we've accommodated the smokers and the nonsmokers in these areas. The nonsmoking area is about 75 percent of the dining room. The smoking area in the dining room is located next to the bar, and, of course, the bar allows smoking.

We seat parties in the smoking session every shift we're open -- lunch and dinner. Also, very often, a patron will sit with their party in nonsmoking but excuse themselves during or after dinner to go to the bar for a smoke, and sometimes entire parties will leave the nonsmoking area, then retire to the bar for an after-dinner drink, a cigarette, or a cigar, which are sold in the bar. This smoking has not resulted in any complaints from our nonsmoking customers -- or the wait staff, for that matter.

On the matter of employee complaints, I've supervised hundreds of employees. Some are not shy at all about complaining, but I've never had one instance of an employee complaining of smoke exposure. If the ventilation systems are adequate and designed with this in mind or, redesigned, there should be no problem.

If the 25 percent of my establishment that permits smoking were to be abolished, I'd expect the following. Number one, a decline in business at the bar and the tables that make up the smoking area. Any claims to the contrary that I heard, 11 percent of smokers prefer a nonsmoking restaurant and that there's that a number of people hiding in their homes, waiting for a smoking ban before they'll come out to eat, I think, are ludicrous.

I don't think there would be any impact on employee health other than anxiety caused by layoffs due to the decline in business.

(Applause.)

MR. WELDON: Rather than protected employees, you'd have unemployed smokers, because a majority of restaurant employees are smokers.

Just simple figures here: Sales tax revenue, we've paid about $255,000 since we opened in 1998 and 140,000 on the liquor and spirits taxes.

(Applause.)

MR. WELDON: These numbers would go down if we lose that part of our trade, and I think the City would lose a lot of money. Why give people a reason not to come to Center City when you're spending money to try to get them here?

We're not talking here about a statewide ban; we're talking about a --

COUNCILMAN ORTIZ: Madam Chair?

COUNCILWOMAN TASCO: Let him finish.

COUNCILMAN ORTIZ: Excuse me. Could you substantiate that more fully. I mean --

MR. WELDON: Well, I was just about to say --'cause we're not talking about a statewide ban here.

COUNCILMAN ORTIZ: That's a declarative statement you're making.

MR. WELDON: Right. In my opinion, I believe that people will go elsewhere. It's unlike California, where they can't go elsewhere;

they're -- in the entire state, it's evenly applied. Here, I believe -- and this is what I'm getting to, my next statement. I think you'll have people --

COUNCILMAN ORTIZ: But it started there city by city.

MR. WELDON: I'm sorry?

COUNCILMAN ORTIZ: It started there by city by city.

MR. WELDON: It's a statewide ban, though.

COUNCILMAN NUTTER: Mr. Weldon, now there is.

MR. GARTH: Right, right.

COUNCILMAN NUTTER: But it started at the city level --

MR. WELDON: But you're not proposing a statewide ban here; you're proposing a ban for the City.

COUNCILMAN NUTTER: I work for the City of Philadelphia.

MR. GARTH: Right, right.

COUNCILMAN NUTTER: I don't work for the Commonwealth of Pennsylvania.

Your statement is that in California, they had no choice. All we're trying to make sure is we keep the record straight. It did not start at the state level; it started at the city level.

Where do you think all of these people are going?

MR. WELDON: Well, here, I believe -- and this is what I'm getting to now -- right across the bridge, about a ten-minute drive.

COUNCILMAN NUTTER: Where they going, to Camden?

(Laughter.)

MR. WELDON: They would go to New Jersey and up to the Main Line, absolutely.

COUNCILMAN NUTTER: So, so --

MR. WELDON: Absolutely. The people in my --

COUNCILMAN NUTTER: As opposed to going to the Prime Rib?

MR. WELDON: I think people who enjoy drinking and going out enjoy smoking, a lot of the trade, and it goes hand in hand, absolutely, with a segment of my clientele.

COUNCILMAN NUTTER: Okay.

MR. WELDON: When they call for reservations, they ask for the smoking area.

COUNCILMAN DICICCO: Could I do a follow-up on that? Not to interrupt your testimony, but do you happen to know what percentage of your clientele comes from the suburbs into the City of Philadelphia that are --

MR. STARR: I can tell you that the majority of the clientele comes from the suburbs. I mean, I don't know exactly, but I'd say clearly that it's 80 percent. Because the population, as you well know, of Center City is small. The majority of our customers are from the Main Line, parts of South Jersey, Northeast Philadelphia. It's not the City.

COUNCILMAN NUTTER: If I could just share with you, at least for the record, that the -- and I don't know, obviously, exactly where your clientele lives. But in the past day or so, I've received inquiries from suburban legislators in counties and townships around Philadelphia asking for copies of the legislation, as their legislative bodies contemplate what they're going to do on this particular issue.

Just thought you might want to know about that.

MR. WELDON: Until a state ban is in effect, these would be my conclusions: that you would see people going out of Philadelphia, absolutely, to dine and smoke. Because they will not stop smoking; they will just spend their money elsewhere, and they'll take their friends and their visitors with them. I'm talking about this segment of the market. It's 25 percent for us, it's less for other establishments, and maybe more for other places.

But there ought to be a way to write legislation to protect the children from smoking without banning it in the bars. Because I'll tell you what, the children are safe at our bar because children aren't served at our bar.

(Applause.)

COUNCILMAN NUTTER: Well, I mean, as a good proprietor, I'm certainly glad to hear that you're not serving any children at the bar, but I've been to your establishment on one occasion, had a great time. Do you serve children in the restaurant?

MR. WELDON: Yes.

COUNCILMAN NUTTER: Okay. Don't they have to walk through the bar area to get to the restaurant.

MR. WELDON: No, they go through the dining room. The bar is actually off to the left.

COUNCILMAN NUTTER: Isn't it when you first come in?

MR. WELDON: To the left.

COUNCILMAN NUTTER: Right, okay.

You know, at the risk of -- and I -- this is a very, very sensitive topic in this community. And at another time, under different circumstances, hopefully we could have a different kind of discussion about -- and you raised it earlier -- about the liquor tax, which I've given a lot of thought over the years to that. And as we try to figure out what is going to happen with the future of the school system, and you may know that I have a resolution right now in City Council looking at the entire tax structure of the City. I've come to call the business privilege tax, rather, "the business challenge tax," and if you can get through the challenge of dealing with our

tax structure in this city, you should get special, you know, dispensation.

But, certainly, as a part of that review of our tax structure, I think we need to take a serious hard look and a reevaluation of the situation with the liquor-by-the-drink tax, but, I mean, you kind of raised that. People are sill still drinking at Prime Rib and have been for sometime, I assume?

MR. WELDON: Mm-hmm.

COUNCILMAN NUTTER: Bar sales are up, liquor sales are up, liquor sales are down over the past couple years?

MR. WELDON: Well, I've only been open a couple of years, so. . .

COUNCILMAN NUTTER: All right.

MR. WELDON: The only reason I would again raise it, and the reason I raised it today, is because, again, you've got a situation where only just a few minutes away, people aren't paying a 10 percent.

COUNCILMAN NUTTER: I understand that.

MR. WELDON: And so that's why, uh --

COUNCILMAN NUTTER: All right, but have

people stopped drinking in your establishment because of that?

MR. WELDON: Because of the 10 percent tax?

COUNCILMAN NUTTER: Yeah.

MR. WELDON: No.

COUNCILMAN NUTTER: I'm sorry?

MR. WELDON: No.

COUNCILMAN NUTTER: Okay, all right.

MR. WELDON: But then, again, I've never opened an establishment here without the 10 percent tax. That's been in effect before I got here, so I really can't speak to that.

COUNCILMAN NUTTER: I understand.

We've interrupted you enough times in your testimony. Please continue.

MR. WELDON: The only actual experience I've had with a smoking ban would be with what happened to me next door, on 18th and Locust Street. A placed named "The Square Bar" opened a year or so ago, with 100 percent no smoking, in the Sheraton Rittenhouse. Now if you walk by, you see the windows covered with paper because they've gone out of business.

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(Applause.)

COUNCILMAN NUTTER: What was this place? What is it?

MR. WELDON: It was a bar in the Sheraton Rittenhouse Hotel.

COUNCILMAN NUTTER: Just a bar or a bar-restaurant?

MR. WELDON: Basically a bar, and they had small tables about knee-high.

COUNCILMAN NUTTER: Not that there could necessarily be any comparison to the Prime Rib, but, I mean, is it a comparable type of menu?

MR. WELDON: A very plush bar, brand new, but they went the total-ban route.

COUNCILMAN NUTTER: Okay. I mean, you're obviously drawing some conclusion to that.

MR. WELDON: It's the only experience that I have -- that I know that's. Why I brought it up.

COUNCILMAN NUTTER: Okay, thank you for sharing.

MR. WELDON: The other points I wanted to make were the international visitor market.

Especially the European an Asian enjoy smoking. I doubt they will enjoy stopping smoking just because they're dining in Philadelphia. The Convention and Visitors Bureau spends a great deal to bring us these markets, and I believe we should accommodate the tastes and desires of our visitors.

COUNCILMAN NUTTER: Mr. Weldon, I have been informed that the black paper that you see at the establishment that you referred to is apparently up because it's under renovation.

(Laughter.)

MR. WELDON: Right. Well, actually, it's closed. The bar is closed and someone else is coming in to take over it.

COUNCILMAN NUTTER: Those things happen.

MR. WELDON: That's what I indicated by saying that.

COUNCILMAN NUTTER: Places open, places close, and hopefully, more stay open than stay closed, but go ahead.

MR. WELDON: But that's a bar that had a 100 percent ban. It's only a year old, and it's

a lively, thriving area. It's 18th Street, there's several places thriving on either side of it. What happened here?

COUNCILMAN NUTTER: I have no idea.

MR. WELDON: And the point was raised about California being a statewide ban, as opposed to this, which this -- the unfairness of having the other places where you can go to smoke is what my point was there.

In summary, I would say that a total ban is overkill, a solution to a problem that at least in my establishment does not exist.

I would say, number two, enforce the choice if you feel the need for enforcement in this area.

(Applause.)

MR. WELDON: Require restaurants to have smoking and nonsmoking areas. Either physically separate the areas by law or, as we did at the Prime Rib, totally separate the air-conditioning supply without recycling or mixing the return air. It's not rocket science.

And, number three, we've got a difficult situation here in Center City with

parking. Our customers pay an extra 10 percent for spirits and wine just by coming into the City. In addition, our purchases of spirits and wine in the controlled State of Pennsylvania, leave us less competitive than neighboring states.

All these three things are against us. I would say, please don't give people another reason not to come into Philadelphia.

(Applause.)

MR. COOPER: My name is Bruce Cooper. As a Philadelphia business owner, I appreciate the opportunity to present my view on the proposed Bill 314, which bans smoking in restaurants, outdoor cafes and certain bars.

For the record, I am a lifelong nonsmoker and the owner of two fine-dining establishments -- Jake's Restaurant in Manayunk, and Novelty Restaurant in Old City.

I would like to state that I have the highest regard for Councilman Nutter, who has assisted me in various issues over the years, and despite my admiration and friendship for the Councilman, I strongly oppose any government-mandated regulation which removes the ability of

business owners to make decisions based on market forces. It is my position that the marketplace forces -- and not the government decrees -- should be the determination in which a hospitality establishment decides its environment. What we are deciding here is the freedom of choice for the Philadelphia business owners and patrons.

My reason for being here today is to reason protect the interests of business owners like myself who seek to continue to have the freedom to meet the very needs and desires of our patrons.

Banning smoking in restaurants would dictate to private business owners how they serve their customers. I believe that business owners are the best judges of how to satisfy their clientele. Both of my restaurants have completely smoke-free dining areas. I choose to have my dining areas smoke-free because the market on which my restaurants rely on dictate that they be smoke-free. The same marketplace which led me to establish a smoke-free dining area requires that smoking be permitted in the lounge area. These accommodations were not made because the

government mandated I do this, but because the marketplace forces determined our policies.

The impact of this smoking ban is being neglected in this debate. Based on my estimates, I would lose revenues in the low six figures at each of my restaurants. If Philadelphia adopts the proposed smoking ban, I will lose my customer base to other counties. And in addition, if my lounges go smoke-free, I will lose a good portion of my drinking customers to establishments who are exempt under this bill.

Members of Council, this one-size-fits-all approach to tobacco use in restaurants simply doesn't work. This will be costly to restaurant employees in the form of lost hours, wages, and tips. It will be costly to owners in the form of lower sales, and it's costly to you in the form of lower sales taxes and employment taxes and lost economic development.

Once again, this puts us at a disadvantage when compared to our neighboring counties and across the river. We simply want to be on the same playing field.

I'd like to also know what --

COUNCILMAN ORTIZ: Excuse me, if I may, Madam Chair.

Again, you make a very clear statement that this will have this detrimental impact. And I ask you, what do you base that upon? What evidence do you have that if this legislation goes into place, that the events that you're describing will occur?

Because we don't know. We're not restaurateurs, we don't know any of that, and we'd like you to explain that to us.

MR. COOPER: I have six small seats at Jake's Restaurant in the bar. I have an extraordinary regular clientele that comes and eats at the bar. They're not allowed to sit in the dining room and smoke, they prefer to eat and smoke at the same time. These people have told me that they will not come from the Main Line, which is about 70 percent of my business, to this area to eat.

Very simple. It's hundreds of dollars a night. Last night, at Novelty, when I was working, 8 out of 120 people ate in the bar specifically so they could smoke. Where do they

go?

I think what we're looking -- also, when we're looking at these different --

COUNCILMAN ORTIZ: So the people that will come into your restaurant, the things that you offer in terms of the ambience, the food, everything else, plus the setting of your restaurants in the different area of Philadelphia, maybe it's for the attraction and not just the reason that they can smoke.

MR. COOPER: Well, I'd like to think that my food is a drug, but I think that the nicotine is a little bit stronger of a pull.

MR. STARR: Bruce, may I interrupt you to say something?

I don't think that we have an answer for that. We have no money to do studies and present to you statistics on what the outcome would be. I think it's more commons sense.

I don't agree with some of the arguments that some of my fellow restaurateurs have. I think we lose credibility when they say certain things 'cause, you know, as -- people will come to our restaurants, they're not going to stop

coming in total. And I think to say that, we are losing some credibility with you.

But I believe that we will lose revenue in the bar areas, as my experience dictates that people will, instead of maybe coming twice a week, maybe they'll come once a week. Instead of coming five times a month, maybe it will be three times a month. There will be an effect.

Now, you can this argument to absurd proportions and say, only people with straight hair can come to Buddakan, in which case, a lot of people will straighten their hair because they really like the food. I mean, there's a certain point where it --

COUNCILMAN NUTTER: What am I going to do?

(Laughter.)

MR. STARR: What I'm trying to say is, we don't have the statistics, we don't have the research to tell you that, yes, 25 percent of our business stop will because of the smoking ban.

COUNCILWOMAN BROWN: Well, then given that there is no empirical evidence, what is the reaction or your feelings to the fact that now all

the research shows that, and I quote, that secondhand smoke is "a public health hazard." As businessmen, what is your response, reactions, sentiments regarding that fact that is based on empirical evidence?

MR. COOPER: What's with the 60/40 split? I mean, the bars can have it, it's okay. I mean, you're asking us that question, but you're asking -- you know, you have this 60/40 split for bars only, that it's okay, 60 percent alcohol. And why is it not a hazard for them, so why -- what are we -- I mean, this is a conflict.

(Applause.)

COUNCILMAN NUTTER: That's a fair question.

MR. COOPER: It's your bill. But also, I think that we're --

COUNCILMAN NUTTER: Let me try to respond to your question, Mr. Cooper, because it is a fair question. The question, Madam Chair, was about the 60/40 split.

When the provision was written, I mean, I tried to be somewhat practical and realistic about life. I don't operate in a political or

legislative vacuum. There was an effort to try to address the issue of small neighborhood bars, and whether or not they would be exempt or covered. This is an issue that's been dealt with in other legislative bodies across the country.

Your statement, I have no particular quarrel with it. If you would like to suggest that it should be prohibited across the board to level the playing field, I'd be interested in listening to that discussion. Would that make things fairer for everyone?

MR. COOPER: Well, that's like receiving 20 lashes instead of 50.

COUNCILMAN NUTTER: I'm sorry?

MR. COOPER: It's like receiving 20 lashes instead of 50.

You know, your legislation and your --

COUNCILMAN NUTTER: If it applies across the board, then, where are the lashes? I mean --

MR. COOPER: You talk about New York, you talk about --

COUNCILMAN NUTTER: I mean, I'm just answering the question. You asked me a question

and I'm trying to respond and throw something back --

MR. COOPER: I'd rather see no ban at all.

COUNCILMAN NUTTER: I'm sorry?

MR. COOPER: I'd rather see no ban at all, but you're also --

COUNCILMAN NUTTER: Oh, I understand that.

MR. COOPER: But you're also comparing New York City, which allows it in bars, which you don't mention, and you --

COUNCILMAN NUTTER: It's allowed in bars that are fully enclosed and separate from the dining area in restaurants that are --

(Unintelligible, three parties talking simultaneously.)

MR. COOPER: Los Angeles allows dining outside and smoking.

COUNCILMAN NUTTER: I'm sorry?

MR. COOPER: Los Angeles allows dining outside -- California allows for smoking outside.

COUNCILMAN NUTTER: Well, I'm --

MR. COOPER: This is not the same

comparison when you --

COUNCILMAN NUTTER: I'm pleased that you've raised that particular issue. I've had a number of discussions with people about the issue of sidewalk cafes. I think that there is room for adjustment or movement on the issue of sidewalk cafes. You and I had had that discussion probably about two weeks ago. I heard you, and I've talked to other that have that particular situation.

One, I appreciate your earlier statement about the nature of our relationship, and our relationship is going to continue, along with the gentleman to your left. I believe that there are a couple areas where some adjustments can be made, whether it's on sidewalk cafes, the amount of distance from the door. And, again, I'm pleased that you have raised those issues, because I think that there can be some legitimate response to that.

The hotel industry, which is -- I actually see them on the street, they've raised some issues about a smoking lounge or a smoking area or designated smoking room that's separate and apart from the rest of the facility, you don't

necessarily have to walk through it. All of that discussion I think is good, it is appropriate, it is practical, but you have to start somewhere.

So I'm glad that you raised that issue, and we're going to continue that part of the discussion.

MR. COOPER: Well, it seems like we've missed the discussion until we got here, because I really had -- no one really found about this until four weeks ago, so, you know, there hasn't been an awful lot of room for discussion here.

COUNCILMAN NUTTER: Well, let me say this, and I think that you'll verify the facts. When there was something, calls were made. I mean, I certainly made calls to people that I know in the industry. It's impossible for me to know everyone, and I contacted my colleagues as well to let them know. This is a fluid process, you have a piece, you put it in, we're now in the public hearing. Everything, I believe, has been above board. There have been a number of meetings and discussions between and amongst people. There's a new alliance that has been formed to address a wide variety of issues.

And I think that this particular issue, quite honestly, almost gets overwhelmed by another issue which, I think, is of greater importance to people in the community, which is, again, the particular tax issue.

But, again, with regard to sidewalk cafes, distance from the building, open-air decks, patios, and outdoor service areas that are a part of the same establishment, I think that there is some opportunity to do something with those things. I am not an unreasonable person.

MR. COOPER: Okay.

COUNCILMAN NUTTER: Thank you.

The Councilwoman still has, I believe, an open question.

COUNCILWOMAN BROWN: So in the spirit of trying to move towards a compromise that everyone can live with, if 60/40 is not acceptable, help us or help all of us understand what might be. 40/60, 55/45? Help us out.

MR. NEWMAN: May I?

COUNCILWOMAN BROWN: Please.

MR. NEWMAN: My name is Allen Newman.

COUNCILWOMAN BROWN: Good afternoon.

MR. NEWMAN: I'm a principal in the Main Street Restaurant group. We operate Kansas City Prime, Sonoma, Fish on Maine, and Royal Grill, all in Manayunk. I respect Councilman Nutter, I've supported Councilman Nutter, and I will continue to do so. But I think -- I think this is wrong.

In response to your question, what I think Councilman Nutter tried to address here was to eliminate the bar from the restaurant because there's no restaurant in town that serves food that sells 60 percent alcohol. All of us who have bars and who permit smoking in our bars and not in our restaurant are doing precisely what is being done in New York City.

So there is no ban in New York City. It's disingenuous for anybody to cite New York City as the example of a restaurant ban because if you have a bar in a restaurant in New York City and you permit smoking in the bar, you have complied with the ordinance.

(Applause.)

MR. NEWMAN: So I think -- what I think Councilman Nutter and as the drafter of this

ordinance attempted to do was to eliminate the ability of the restaurant owner in Philadelphia from doing precisely what is being done in New York.

So all of us would have no objection in permitting the smoking in the bar and no smoking in the restaurant, which is exactly what we do now. So 60 percent eliminates that because there's no restaurant that does 60 percent alcohol.

(Applause.)

COUNCILMAN NUTTER: Mr. Newman, if I can just ask a question.

MR. NEWMAN: Yes, Councilman.

COUNCILMAN NUTTER: How do you protect or separate the air between the bar and the dining area? You made reference to New York. It is at least my understanding -- I'm sure you get to New York more than I do -- that in the New York situation, a restaurant with more than 35 seats, you cannot have smoking in the dining area, and the bar is supposed to be in a closed environment, separate and apart from the dining room. Is that your understanding?

MR. NEWMAN: That is not the case from experience. Take a ride, take a look and see. It is not being done.

What we've attempted to --

COUNCILMAN NUTTER: That's my understanding of the law. Now, I mean, what they do in New York -- I mean, they've got Mayor Giuliani and --

MR. NEWMAN: That's not the practice.

COUNCILMAN NUTTER: Okay.

MR. NEWMAN: What we've attempted to do is to filter our air exclusively from our bar. We do the best we can.

COUNCILMAN NUTTER: But what does that mean?

MR. NEWMAN: I am a believer in choice, and I honestly believe that this is a choice. We have chosen to permit smoking in our bar. Someone else may choose to have no smoking in the entire restaurant. The patron chooses either to come to our restaurant or not to come there.

COUNCILMAN NUTTER: I understand that, and I'm not making the choice argument.

I was asking, I guess, more of a

technical or an engineering question. How do you separate the air in the dining experience between people smoking at the bar and people dining in the restaurant?

MR. NEWMAN: We attempt to filter it.

COUNCILMAN NUTTER: Do you believe that there is a separation of the area in those --

MR. NEWMAN: We attempt to do that, we attempt to filter that air. I am not a technician. I do not know that every meter of air does not escape into the restaurant.

But, as Bruce said, we have people who come and sit at our bar and smoke and eat. That's their choice.

COUNCILMAN NUTTER: Right, I understand.

MR. NEWMAN: But there are aspects of this proposed ordinance that really are inequitable and illogical. This 60/40 percent, I hope I answered the Councilwoman's question, but what this does is, it eliminates the ability from any restaurant being defined as a bar, because the only people who do 60 percent alcohol are people who serve very little food and who probably comply

with the Sunday regulations.

MR. STARR: May I say something, Allen? 'Cause this 60/40 things troubles me a bit. I have one restaurant that is around 60/40, and I consider it a restaurant, and I honestly -- and I know it's not objective coming from me, but if there was a ban on smoking in this particular restaurants, you'd put it out of business, because the whole concept is --

COUNCILMAN NUTTER: I thought you said you were doing -- you're doing 60 percent liquor?

MR. STARR: 60 percent liquor, yes.

COUNCILMAN NUTTER: Right.

MR. STARR: If, for some reason, you decided to do a ban on everything -- dance clubs, restaurants of any kind -- I think that restaurant would be put out of business, I honestly do, because it's a martini bar with food, and the whole concept is all of a part of it.

MR. NEWMAN: Councilman Nutter, you also have an exception here for a private club. I think this is ripe for abuse and a proliferation of a lot of suddenly private clubs. I don't think we need that.

I think if you operated on the basis of permitting us to have a bar in our restaurant where people smoke in the bar, as they do presently, everything would be in compliance with the attempt that you're trying to make. But once you create this 60/40 issue, I think you're losing.

When -- may I assume that you are going to eliminate this prohibition in sidewalk cafes?

COUNCILMAN NUTTER: I expect to offer amendments in the course of this hearing to eliminate that.

MR. NEWMAN: Because, in all honesty, it doesn't make any sense, with all due respect. The idea of people sitting outside and inhaling the gas fumes and carbon and dirt, and you're going to say that these people can't sit besides someone who is smoking simply doesn't make sense. The 20 feet from an entrance, is that --

(Applause.)

MR. NEWMAN: I was going to say --

COUNCILMAN NUTTER: Again, I appreciate you raising it. I would expect --

MR. NEWMAN: Is 20 feet better than 21

feet? So now you have --

COUNCILMAN NUTTER: Well, I think 20 feet is a little bit of a problem because, as you might attempt to smoke your cigarette, more than likely, you'd end up out in the middle of the street, so --

MR. NEWMAN: Yes. You can't even leave the restaurant.

COUNCILMAN NUTTER: And I would also expect to make an amendment on the feet from the door.

MR. NEWMAN: Enforcement, how about enforcement? You don't expect our -- once our manager says, Please put out that cigarette, and the guy, you know, shows him one of his fingers, my manager is not going to touch that person.

COUNCILMAN NUTTER: I wouldn't expect him to.

MR. NEWMAN: Now, what does he do? You say, Call the Health Department, call L&I, and then call the police.

(Laughter.)

MR. NEWMAN: Now, are you going to have smoke police? It doesn't make any sense.

COUNCILMAN NUTTER: It's not actually the Police Department.

MR. NEWMAN: It doesn't make any sense.

COUNCILMAN NUTTER: I'm sorry. Well, with any bill, you try to have some level of enforcement, and our various departments certainly have levels of priority for things. But if you're going to have a law, you do have to provide at least the parameters of some enforcement.

Most people, even smokers, are very conscientious and are law-abiding people and will self-enforce to some extent. All the bill is trying to say is, you have to lay out process and procedure for some action to be taken, that you at least ask the person to either put it out or do what most people do today, at least in office buildings, and they excuse themselves for a few minutes.

MR. NEWMAN: But this is not that kind of area. People come to restaurants to enjoy themselves, to leave the troubles of the day behind them, and they don't want confrontation.

COUNCILMAN NUTTER: Right.

MR. NEWMAN: And the problem I see is,

it's --

COUNCILMAN NUTTER: Do you think someone would confront you if you tried to smoke a cigarette in a movie theater?

MR. NEWMAN: I'm sorry?

COUNCILMAN NUTTER: Would someone confront you or say something to you if your tried to light up a cigarette in a movie theater?

MR. NEWMAN: Probably the usher or somebody, and you're going to find --

COUNCILMAN NUTTER: But doesn't a person come out for an enjoyment that particular night to --

MR. NEWMAN: And you're going to find people who will smoke anyway.

COUNCILMAN NUTTER: -- spend two and a half hours in a dark room with a couple hundred other people?

MR. NEWMAN: And people will smoke anyway.

COUNCILMAN NUTTER: Not in a movie theater.

MR. NEWMAN: Yes, people do smoke in movie theaters.

COUNCILMAN NUTTER: Okay.

MR. NEWMAN: The problem with this is that if it's inequitable and there isn't really a sense of urgency, there are going to be abuses and violations.

I would urge a -- the Council to oppose this.

COUNCILMAN NUTTER: Okay, thank you.

COUNCILWOMAN TASCO: Please identify yourself for the record.

MR. GUILLET: My name is Andre Guillet. I'm the Director of Operations for Georges Perrier's restaurant, and the reason why I'm testifying instead of him is because we know that he can become very passionate, and I am going to try to calm him down.

(Laughter.)

MR. GUILLET: But the fact is that George Perrier has two restaurants, a third one is in process. And he has done for Philadelphia an incredible thing. I don't know about most people here, but I'm not from Philadelphia as, you can hear.

But I came -- the first time I came to

Philadelphia, I didn't come to see the bell; I came to eat at the Le Bec Fin, because all over the world, and especially in the states, when you say the first word of Philadelphia, people say, Do you know Georges Perrier? do you know Le Bec Fin? He has put the City on the map of culinary aspect of it.

So when we ask him advice about the restaurant industry, I think it's important to really listen to what he says, because he knows, and he would not do anything, anything at all, that would hurt his customer and his restaurant.

For myself, I'm a nonsmoker. I have a mother who is 85, two aunts in their 90s who -- 3 of them are smokers. Not only do they smoke two packs a day, they drink brandy every night before they go to bed, okay? They're very healthy, they're very lucid, their mind is good.

None of the survey that we have heard today talked about genetic, and I think it would be interesting to do something on genetics. That's one of the things.

I think that the survey that all of those people have come and talked to us and

witnessed about it, I wish that at the restaurant industry in Philadelphia, we had the time to prepare and we had the funding to get to do those surveys. And I can guarantee you that we would have expert who could tell you the opposite of what the survey showed.

(Applause.)

MR. GUILLET: I worked in New York, I worked in Boston. I made three phone call in New York since I know of this hearing, three phone call in Boston, and two in San Francisco. And when I asked the restaurant owners or the chef, what do they think about the bill in our city? they say let them pass the bill, they don't know how to enforce it, they will not enforce it, you will never stop people smoking. That's what I'm told. And I wish that I could have brought a few chefs from the Industry in San Francisco to be witnesses here. But, again, we don't have the funding.

Once again, we are looking for tourism for Philadelphia, and we have heard a lot of things about increases in sales in those different cities, but what about us. Did those people take

us in consideration? We're restaurateur, we work hard, we do marketing, we sell. It doesn't have to do anything about smoking or nonsmoking. We work hard for our business to enlarge our business. It's not a question of maybe because of not smoking.

The economy is wonderful so, of course, the city is going to do better. Philadelphia has done very well and is still doing well. I mean, we hear all over the United States now about Philadelphia and the restaurant industry. I mean, you hear about the bell and the history and the museum, it's true. But we also hear a great deal about the restaurant of Philadelphia. I mean Neil Stein, Georges Perrier, Steven Starr are people who are recognized in the industry all over the United States. Would we do anything to hurt our business and our guests?

I'm old enough to remember when we only put sugar on the table of a restaurant. Now we put Sweet and Low and Equal because of the request of our guests. We learned. We also learned that the French menu, well, the sauces were too heavy, we had to go lighter. We heard, the customer told

us. We also heard that the customer said there is section for smoking and nonsmoking. We heard, we did it. We don't need the law to tell us that. We heard our customer tell us what they wanted.

We know this business, we want the business. We are very passionate about every guest who enter the restaurant, we want to take care of them. We also have to be understanding and compassionate to people from other country who have different culture. I mean, if you think of Penn, we just had a great weekend with Penn graduation. A large percentage of our clientele were foreign. They smoke. You have to educate them very gently and say, You can't smoke in the dining room, but please go to the bar. I can't imagine telling people, You can't smoke anywhere.

We need to respect choices. I'm an American by choice, and I must tell you that I love this nation and I love this country. And I'm a nonsmoker, but I want the right to say "yes" or "no" all the time.

(Applause.)

MR. GUILLET: (Holds up American flag.)

This was given to me the day that I

became an American, and I'm really proud to carry it wherever I go, okay? But America is a question of choice.

There is so much that this city could work on, okay? I mean, we talk about health. I mean, we have vendors outside that have trucks who are not even registered properly. Are we worried about our health? Are we worried about the car that move in the City? I mean, do we have to change everything? And who is going to monitor this?

Every single day, I have in front of Brasserie Perrier 20 to 30 students in front of my restaurant who are about 5 feet or 6 feet away from me smoking. I have to clean up after them, okay? Who is going to monitor that, that I have to have 20 feet to stop the students smoking, who don't even belong to my business? I will call the Health Department, but the only problem with the Health Department, they will be there only from 9 to 5, okay?

(Applause.)

MR. GUILLET: Not only they will be there from 9 to 5, but I'll get a recording.

What we believe in in the restaurant industry, what we believe in, we are asking to have, is the right to make our own decision in our own businesses, okay? And I can assure you that the ventilation is taking care of all of it. It separate from the bar to the restaurant because that's what it needs to be done. And we also need to love our customer, and we don't want to hurt them in any way.

We just want to have the choice as an industry to do what we feel is right for our guest.

COUNCILMAN ORTIZ: Excuse me.

COUNCILWOMAN TASCO: Point of order okay.

COUNCILMAN ORTIZ: A point of order. Okay? You just made a statement that just hit me, that you don't want to hurt the customers.

MR. GUILLET: No, I don't.

COUNCILMAN ORTIZ: Obviously, no one does. The people that testified previous to you said that the very act of smoking within that area hurts the customer and other people that are inhabiting that area. So I know that you want to

be gentle to the customer.

MR. GUILLET: Yes.

COUNCILMAN ORTIZ: But there is other testimony that says that this action by you hurts other people that may be near you.

MR. GUILLET: We know that smoking is not good for you. I don't smoke, okay? That's a choice I make, okay. When I'm saying about I don't want to hurt customer, is that I want them to have the choice. Maybe that's what I want to say, okay? I want them to have the choice to either smoke.

I mean, we have nonsmoking section, and they go and sit in a nonsmoking section, and I would say two or three of the guests out of a party of six will come to the bar and have a cigarette. Okay, that's their privilege, that's their choice. I give them a space to do that, okay?

That's all I'm saying.

COUNCILWOMAN TASCO: Thank you very much.

Councilwoman Donna Miller?

COUNCILWOMAN MILLER: Thank you, Madam

Chair.

I just want to say thank you for your testimony, and I appreciate hearing the comments here today, and I think it's important that we, as law makers, listen to what's being said on both sides of this issue. And sitting here, listening to you business operators of restaurants, I think that the points that you're making about the marketplace forces is a point that's well taken. I don't believe that you do anything in your restaurants or other types of businesses to hurt your customer and client base, and I believe that you are probably very good managers and would not do anything that would turn customers away or turn customers off.

So I just really wanted to make note, you know, that I, for one, am listening, particularly around the marketplace forces and really the concern that people are showing for customers, both for and against this issue. And this is not an easy issue for me. You know, I hear from people on both sides all the time.

But I do believe you, as restaurant owners, would not do anything that would really

harm your customers. And you certainly know a lot more than I do about it 'cause I didn't know that New York was pretty much was operating in the way that was described today, and I think I'd like to get more information on those types of issues.

Just wanted to make those comments.

MR. GUILLET: Thank you.

COUNCILWOMAN TASCO: Councilman DiCicco.

COUNCILMAN DICICCO: Thank you, Madam Chair.

And just to pick up on the comments made by my colleague Councilwoman Miller, having been a restaurateur myself, I say God bless all of you because once is enough.

(Laughter.)

COUNCILMAN DICICCO: Once is enough. It's a very difficult business, and I can I remember at nights when I would listen to the weatherman saying it's going to be a very icy night and conditions are going to be dangerous, and unless you have to go out, don't go out, stay home, and then no ice comes, and then you're sitting there with your help and the heat's

running and everything's going. But people make a choice not to go out based on the information they get from the weatherman -- or the weather person, to be more politically correct.

I hear all of you. None of you are smokers and, obviously, you've made that decision to smoke or not to smoke. And I hear you saying things about how you have made some decisions as to the way you prepare your food and the types of food that you serve based on what the market demands, which is what people business do, and obviously you're doing that, and rather well, 'cause I've been in every restaurant that you gentlemen own -- a few times over, I guess.

I guess my point is, many of you had some comments about the bill saying that the bill as it stands today, you obviously are asking that we would not support the bill, but some of you had made comments about some changes that you'd like to see. I won't be here much longer because I have another place to go that I mentioned earlier, and I'm not preempting what this committee will do or not do.

But I think it would be wise if we

would all down, take a deep breath in a non-smoke-filled room and look at this as maybe a task force with the industry, the hotel industry, the restaurant industry, a group of people with some studies of your own that you have not yet had time to bring to this hearing today.

And with the Chair's permission and the sponsor of the bill, who I have a lot of respect for, and I know that Michael didn't just dream this up, pull it out of the air. He's a very thorough legislator and takes a lot of time and pride in what he does, and it's one of the reasons that I actually signed on the bill, not because I totally supported it, but I thought he had a mission and he had an idea and he had some strong feelings about that. So I respected Michael and did sign on as cosponsor of the bill, to at least get these hearings going. And I should be leaving in about five minutes or so, and I don't anticipate the hearings will be over by then.

And I would just offer at some point that maybe we can continue these hearings, form a task force work to with the industry to see if there are some solutions to what we're all

attempting to do here.

And, again, I know that the industry would never do anything not only to harm their customers, because it would be bad business. And if the customers were complaining that much about the conditions of the restaurants today, as they exist today, with the bar smoking area versus the nonsmoking dining area, I think you would have heard about it, and I believe, as business people who want to make money -- that's why you're in business - would have made those adjustments.

But there are some issues. You know, as Councilwoman Miller said, we do hear from both sides of the aisle. I've received a number letters from the American Lung Institution, hospitals, people who have had lung cancer as a result of secondhand smoke. So we would like to do the best thing for everyone. At the end of the day, I think no one gets everything that they want. I'm a compromiser, I think I've been trying to do that. At least for the four and a half years I've been here, I always try to find some compromises. So I would just offer that as a suggestion at this time.

That being said, if the bill is moved out of committee in its present form, I would like to be recorded "no," and I really won't be able to comment on any amendments 'cause I'm not sure if they'll have them completed by the end of the day, so --

COUNCILWOMAN BROWN: While we're waiting to hear from the Chair, could I please hear your reaction or comments to Councilman DiCicco's proposal? What are your views about sitting down collectively to talk through and work through --

MR. STARR: I believe it's an excellent idea. And I commend the Council here for leading everyone in this direction. I think it needs to be talked about. I just think that the measures were very extreme.

I think Councilman Nutter is a great councilman. I've watched his career, I think he's got a bright future. I just think it's too much too soon. And just please work with us and let us work with you to come up with some sort of compromises that are good for everyone.

(Applause.)

COUNCILWOMAN BROWN: Could I hear from a few of the others?

MR. WELDON: I would just agree to the same. I know I've heard Councilman Nutter speak to an open mind about the 20-feet regulation and also an open mind about the sidewalk cafe prohibition.

And I would just -- I would say that as far as the process has seemed to me to be zero to 60, going from no regulation in this area of the dining room -- see, I come -- in Washington, we're required to have it, a certain number of seats available for nonsmoking. Apparently, there's no regulation here whatsoever on that.

COUNCILWOMAN TASCO: Do you find that you provide more nonsmoking seats on demand than you do some for smoking seats?

MR. WELDON: Absolutely.

COUNCILWOMAN TASCO: So more people are requesting nonsmoking --

MR. WELDON: And it has evolved to that point. But, again, in Washington, they asked us what area and it started out small and it grew, but there is a regulation to have a certain number

of nonsmoking seats available.

It's the bar area that seems to be the most, because that's our safety valve, that's our pressure valve that says to us, Well, at least we can get a customer in here and provide them a safety valve if they need to have a smoke.

And as far as the public health and the harm, again, I don't think -- if people know that there's smoking in bars, they can avoid those places. With the right kind of ventilation, I think we can protect our dining rooms as well in a reasonable way, but the notion of banning it from the bars is really the --

COUNCILWOMAN TASCO: The real stickler.

MR. STARR: Miss Councilwoman, Mr. Perrier has informed me, by tapping me on the shoulder, that he'd like to make a statement.

COUNCILWOMAN TASCO: Oh, no.

MR. STARR: Yes.

COUNCILWOMAN TASCO: I don't believe that.

(Applause.)

COUNCILWOMAN TASCO: He's been just waiting to make a statement all day. Come on up.

COUNCILMAN DICICCO: Andre, you're fired.

(Georges Perrier comes forward.)

MR. PERRIER: I promise I'll be very calm and quiet.

I hear all the arguments. The only thing I want to say to the City Council of Philadelphia, Philadelphia is not California, Philadelphia is not New York, Philadelphia is not Chicago, Philadelphia is not even Boston or Baltimore.

The doctor who talk early, talking about and saying how good the business is in California, it makes me laughing, the people who are statistic, because I do have statistic, and the statistic that I have tonight to the bring to the City Council, by capita, the United States of America, Philadelphia is the last before last, the last before last. By capita, the people who go to restaurant and they spend money, Philadelphia is the last before last. Baltimore is in front of us, and we have the last one on the list. The first one is, but of course, is Los Angeles, because in Los Angeles, 80 percent of the

population going out and eat.

And here, if we not be careful on this bill, as you know, because I've been in the city for 30 years, I own this restaurant for 30 years in October, I am certainly the oldest French restaurant on the nation. Even in New York there is not a restaurant who has last that long. I've fought very hard for my industry.

I was the precursor in 1983 when I opened on Walnut Street, who came to City Hall and confronted Mayor Goode and talked to Mayor Goode and beg him, beg him to come down Walnut Street to chase prostitution away. When Walnut Street, when I came in 1983, now Walnut Street is the Rodeo Drive of Philadelphia. Walnut Street was prostitution, was prostitute walking all over the street. I'm the one who went to see Mayor Goode and beg him.

We have tremendous problem in this industry. I don't know if you're aware of, we are building 5,000 new room in the City of Philadelphia. We have no convention whatsoever. As you know, the statistic, because I know statistic, I line in statistic, and I have 200

employee who believe in me that I have to support, and when 100 employees soon with my next restaurant that I'm going to open. I will 300 people, who generate a lot of tax and a lot of money for this City.

And the problem that we have, as you all know, the Convention Center is too small, we have tremendous problem with the union, and you are here talking at smoking and a ban on smoking, when we don't even know if tomorrow the restaurant industry in Philadelphia will be in business because we don't even know if we will survive because we have no convention. If the Mayor doesn't straight the problems with the union, we don't even know if we can survive because we have no convention.

So now you want to put a ban on cigarette? We have no smoking all over the restaurant. Brasserie Perrier has 60 percent no smoking. The only place that we allow is the bar, and now you want to cut us the bar? What we going to be left with? Where are we going to go, to another city? It will not be difficult for me to do that because I don't care, I've been in

business 30 years, I have seen enough.

If I have to close my restaurant, Le Bec Fin, I don't need it. I can close tomorrow and put 100 people out of work. I'll do that, I don't care. The City of Philadelphia will have lot to lose because the reputation in my restaurant carry far away all over the nation. Is that what you want me to do?

It doesn't matter. I already protect myself because I'm already opening a restaurant in Main Line, because I'm afraid of this city, how it's going to turn out, so I protect myself, going to open up a restaurant on Main Line, where smoking is permitted, where I don't have the problem that I have in this city. The people in the Main Line don't even want to come in Center City because of parking problem, and now you're talking about smoking? Nobody from the Main Line don't ever come to this city anymore.

So I think we have to sit down and be very cautious of what we're doing on this bill. I am certainly not against smoking because we already do that on that on our dining room, but putting a ban on smoking in the bar, I think it's

absolutely completely and very dangerous for the future of the City.

Thank you.

(Applause.)

MR. NEWMAN: Councilwoman, may I say that Debbie Bat (ph.), from our restaurant association has informed me that she has requested that there be an opportunity for our group to meet with your group so that we can discuss it, come to some conclusions, perhaps find a middle ground, and we would like to start that process as soon as possible.

COUNCILWOMAN TASCO: Well, I can't speak for the sponsor of this bill. And I too -- we've heard the testimony earlier, the testimony that started this morning about the settlement of the tobacco suit and how the money would be spent in Philadelphia. We talked about the secondhand smoke, we've had testimony from experts. We have heard, and hear, your concerns about the legislation before us.

And I have suggested to the sponsor of this bill that we do just that, but it would be up to the sponsor of this bill to make that final

decision as to how he would like to proceed so that maybe we can come up with a piece of legislation where there are win/win's on all sides. I don't know, some people won't see a win/win, some will see a win/win.

But this is a forum for us to discuss all kinds of issues, and there are many, many issues going on in the City of Philadelphia and many debates going on about many, many things that are happening, including the union issue with the Convention Center. But when we do have a topic to discuss, we bring it to this forum so that the public can come and express their position on whether they're for a bill or not for a bill.

So, yes, we do have problems, Georges, in other areas, but this is what we have today, and we have to discuss it today.

And so we will allow our -- we will proceed with the testimony 'cause there are other people here who have to testify, and then we will move forward, as the sponsor of this bill would like to have his move forward.

I'd like to thank you gentlemen very much for your testimony and invite you to stay.

Thank you.

Our second panel E.C. VanMerkensteyn, Joseph K. Poon, Kimberly Niemela, Vicki Lachman, Joseph Ruiz, Pam Packard, and Ken Weinstein.

(Witnesses come forward.)

The Chair recognizes Councilwoman Miller.

COUNCILWOMAN MILLER: Madam Chair, due to a prior commitment, I too will have to leave, but I just want to publicly go on record as supporting the call for a committee to further discuss this whole issue.

Thank you.

COUNCILWOMAN TASCO: Thank you very much, Councilwoman.

Good evening. We've moved from afternoon to evening. Would you like to state your name for the record, please.

MR. VANMERKENSTEYN: My name is Eric VanMerkensteyn, and I'm very sorry that some of my colleagues have left the room, because I'm always one who goes against the trend of what people would like to do.

Let me explain myself. First of all,

I, too, am a foreigner who chose to move to this country in 1964. As a citizen since 1964, I've been at the University of Pennsylvania as a student, as a teacher, and for 18 years, as associate dean of the Wharton school of the University of Pennsylvania. I am now there as a part-time teacher because I decided to fulfill a dream, which a Councilperson would say is probably the stupidest thing I could do. I decided to create a restaurant.

I have the pleasure, after doing a lot of market research and working with my students back in the '80s, that in October of 1999, I opened Van M's Music Bar & Grille, at 126 Chestnut Street, which is the only totally smoke-free live-music good restaurant, and service is always questionable -- because we're still learning.

(Laughter.)

MR. VANMERKENSTEYN: I chose to do that because I found a market niche, and the niche was that no one else is doing it.

I encourage City Council, deep in my heart, to pass this bill. And the reason you want to pass it is because I find it a little odd,

since I was listening to the earlier Council hearing, to sit here and make plans about a tobacco settlement and not have legislation that outlaws smoking. There's something wrong with that picture, in my book.

But from a business point of view, I agree with my colleagues. I hope that you don't pass this legislation, because I would like to continue to be the only smoke-free live-music, good-food restaurant on the entire east coast of the United States. I have a niche, it's a market niche, I found it, and I would like to build on it. So in that sense, I hope you don't pass it.

I would like, with the Council's permission, and if you do put a study group together, I encourage them to consider a small alternative or amendment to the current proposal, and that says, pass the bill. And if you do your 20 feet or if you do your local bar exemptions, go ahead and do those.

But also allow -- and now for a very small fee, which, of course, would be revenue to the City of Philadelphia -- to create a smoking license so that restaurants can choose to be smoke

or non-smoke. And for $100, they buy a license that says that they can put a sign up that "You are allowed to smoke in this restaurant," just like you're allowed to drink in this restaurant, because we have a liquor license.

So I do say in the spirit of good business that your choices are difficult, and I hope that you will consider when you put a panel together of my colleagues in the restaurant business and yourselves, that you might consider this as an amendment.

Thank you very much for your time to listen to me.

COUNCILWOMAN TASCO: Thank you very much.

Do you ever get patrons who come to your bar and ask you, are you allowed to smoke? and they leave?

MR. VANMERKENSTEYN: I do get patrons who come to the door and see the sign -- I have a rather large sign that "says smoke-free environment." I find a couple -- and again, these are not data, these are stories. I find a couple of stories to be interesting.

One story, which I have to say is amazing, and it's about friendship, if there are six people going out and having a good time and one of them is a smoker and five are not, it has been shown in my restaurant that all six will leave as a courtesy, as a friendship to the one who would like to smoke.

I will also say -- and again, this is not hard data, but it does argue against some of the people who feel that you could actually handle this with mechanics and other things -- when somebody lights up in my restaurant, which they do once in a while by accident and very innocently, within 30 seconds, you can smell it at 120 feet away, which is the length of my restaurant. I mean, this is not what I call rocket science to know that, in fact, the smoke is visible, physical, and you smell it rather quickly. People are supremely courteous about putting out their cigarettes. When that happens they do so within one puff, but, of course, a certain amount of damage has been done.

I will say that the vast majority of my customers come back and they come back because

they love being in a smoke-free environment. That's my market niche, that's what I chose to build the business on, and I hope I get to keep doing that.

COUNCILWOMAN TASCO: Thank you very much.

MR. VANMERKENSTEYN: Thank you.

Will you excuse me? because I do have to meet my wife.

COUNCILWOMAN TASCO: Thank you.

MR. VANMERKENSTEYN: Thank you.

MR. RUIZ: My name is Joseph Ruiz. I'm the general manager of the Sheraton Rittenhouse Square on 18th and Locust.

We are currently America's first environmentally-friendly hotel. We're 100 percent nonsmoking in all of our guest rooms as well as in all of our public facilities. We have been in operation for one year and consider our property very successful. As our property is still in its maturing stages, we continue to exceed our competitors by a 2 percent increase in occupancy, with a respectable average rate.

Our competitors average anywhere from

22 to 35 percent contribution from their respective reservation systems. Our property has experienced a 70 percent contribution from our reservation system, and that's simply unheard of in our business. Our business is driven around our eco-smart product and it's nonsmoking environment, and we strongly believe it's working.

I try to avoid the restaurant issues and remain neutral in that perspective, out of respect to my fellow restaurateurs. Unfortunately, Mr. Weldon has put me in a position to defend Square Bar and its current condition. Square Bar did $1.2 million in its first year of operation, and it's only a 28-seat restaurant. We simply just chose to lease it out to a very successful restaurateur in Neil Stein to just better our business, our overall business. So it did not go bankrupt.

We feel that our operation is very successful in its nonsmoking environment, and we will continue to be 100 percent nonsmoking, but I do want to say that we do have some reservations on the restaurant end of this bill.

Thank you.

COUNCILWOMAN TASCO: Thank you.

MR. RUIZ: I also need to be excused. Thank you.

COUNCILWOMAN TASCO: I'd like for you to come back, though, 'cause you kind of left us hanging at the end. I was going to wait. You said you have some reservations about the restaurant. Could you elaborate on that?

MR. RUIZ: We just wanted to be in a position of -- to remain neutral in that perspective. The reason for that is, we don't have a barometer to really measure our success as far as the nonsmoking environment from the restaurant perspective.

COUNCILWOMAN TASCO: So you did not operate restaurant in your hotel?

MR. RUIZ: Yes, we did.

COUNCILWOMAN TASCO: And it was smoke-free.

MR. RUIZ: It was smoke-free.

COUNCILWOMAN TASCO: And. . .?

MR. RUIZ: We opened as a smoke-free and a smoke-free restaurant, so I don't really have a barometer to measure whether it's not

successful or it is successful. I think $1.2 million in a 28-seat restaurant in its first year of operation is very successful. Again, we just chose to go a different route and bring in a big-name restaurateur in Neil Stein to run the front.

COUNCILWOMAN TASCO: Well, is it still operating?

MR. RUIZ: No, it's currently under renovation. We do, however, have another restaurant in that facility, called Poccine's (ph.), which is also 100 percent nonsmoking, and it will remain nonsmoking, which we will run.

The purpose of having Square Bar closed was not because it went bankrupt because of a nonsmoking environment.

COUNCILMAN ORTIZ: Was it doing good business, the nonsmoking one?

MR. RUIZ: I'm sorry?

COUNCILMAN ORTIZ: Is it profitable?

COUNCILWOMAN TASCO: The nonsmoking restaurant.

MR. RUIZ: Did it profit?

COUNCILMAN ORTIZ: Yeah.

MR. RUIZ: Absolutely.

COUNCILWOMAN TASCO: No, the current nonsmoking restaurant.

MR. RUIZ: Is it profitable?

COUNCILMAN ORTIZ: Yeah.

MR. RUIZ: Absolutely.

COUNCILWOMAN TASCO: Thank you.

COUNCILMAN NUTTER: I'm sorry. I know you have to leave. As the Councilwoman said right at the tail-end of your statement before you got up, you said you had some concerns about the bill as it related to the restaurant. Did you answer her question, or what was the concern?

MR. RUIZ: We really wanted to remain neutral on that.

COUNCILMAN NUTTER: That's fine. I just didn't understand the nature of --

MR. RUIZ: I have several opinions on it because I've ran restaurants that were smoking and that were nonsmoking. I did have reservations when I came into this property. It appears that it has been successful.

The smoking, as far as the bar end of it, I do have some concerns with that. You know,

the restaurant itself remaining 100 percent nonsmoking, I think we all agree that we would want something like that. But on the bar end of it, the lounge end of it, the lounge revenues, there are your social smokers out there that want to come out and smoke and have a beverage.

COUNCILMAN NUTTER: Right. In the new environment, without revealing any particular secrets about how you plan to run it or anything like that, would you be able to fairly well guarantee -- and I understand there are no guarantees in life but, I mean, would you be able to create an essentially smoke-free environment in the area while still allowing smoking in the bar? Is that possible?

MR. RUIZ: No, it's not possible. And that's why we have to remain consistent with our total concept of an eco-smart smart hotel. So regardless of whether -- we would have to remain nonsmoking in the entire building -- in the restaurant facilities as well as our banquet facilities and our guest rooms. Our entire building is completely nonsmoking. It goes along with our concept, and we need to be consist with

that concept.

COUNCILMAN NUTTER: I understand. Okay, thank you.

MR. RUIZ: Thank you.

MS. PACKARD: Yes, good evening. I'm Pamela DiStefano Packard. Thank you for inviting my testimony, and I'm here representing my family's restaurant, the Victor Cafe, which has been in business for 85 years in Philadelphia.

In 1986, we elected to become an entirely smoke-free. That's 14 years ago, and we have live performance too. I'm sorry that the man who left has never heard of the Victor Cafe.

But at any rate, we have not suffered at all from eliminating smoking. We have prospered in the 14 years since. I seem to recall some years ago, when a lot of ballyhoo about the drink tax and how that was going to surely sound the death knell for restaurants in Philadelphia. We've heard ample testimony today that, in fact, the opposite has come to pass.

I will just keep this very brief and say to you that if the drink tax didn't kill the hospitality industry in Philadelphia, I don't see

how the smoking ban can, when the majority of the population is comprised of nonsmokers.

I should also say that from an experiential point of view, most adults can handled being asked to go two or three hours without a cigarette. If it's too cold for them to go outside and smoke, they simply don't do it for a couple of hours. And people who come to Victor's know that that's the rule, and they abide by it. So I don't see that being a problem for other places where people want to go.

We imposed the ban because it was utterly clear how deleterious the effect of smoke was on the pictures, which are very old, and on the patrons, and also on the performers, who, unlike the patrons, don't have the option of standing up and leaving after two hours.

Thank you for your time. That's all I have to say.

COUNCILWOMAN TASCO: Thank you so much for your testimony.

(Applause.)

MS. LACHMAN: Hello. I'm Vicki Lachman, and I'm here from the Chestnut Hill

Community Association. I am also a nurse, and fortunately, my other medical colleagues have given you the information that you need to understand why they've submitted smoke-free legislation for the restaurant workers of the City.

What I want to share is the experience of Chestnut Hill, which, as you know, is part of the City of Philadelphia.

(Laughter.)

MS. LACHMAN: In 1996, in January of 1996, I submitted a resolution to the Chestnut Hill Community Association, which read as follows: "The Chestnut Hill Community Association encourages all restaurants, stores, and other public places in Chestnut Hill to maintain smoke-free environments." That resolution was passed in January of 1996.

We have -- in Chestnut Hill, we have a total of 28 eating establishments. Of those 28 eating establishments, 20 of those are smoke-free. One of those is a bar called "McNally's Tavern." McNally's Tavern went smoke-free, and what McNally's Tavern has experienced is an increase in

patrons. People who wouldn't go to McNally's, even though they have great food, now go, and the family members get to go to McNally's.

There is also a bartender at that McNally's, one day a week, works in another place of employment. That is on Thursday night. Every Friday morning, he wakes up with respiratory kinds of problems. He is now seriously considering quitting the other place. There are two waitresses in McNally's who have moved from other smoke places to be able to have better health.

I also -- Fiesta Pizza, which is owned by Sam and Pete Thomas, was a smoke restaurant. They allowed smoking. I first approached Sam to remove the cigarette-vending machine because the teenagers were getting at that machine and had free access to that machine. He very willingly did that.

I asked Sam because, it was an environment where children went to because of the pizza. And you may know, in Chestnut Hill, we put a playground. For the whole community, we built a playground for Jenks School. And what happened was that he said, Vicki, I think that my patrons

should make that choice. So what he agreed to do was to have a smoke-free -- or a smoke-free survey.

The survey was, We are letting you, our customer, decide if we will become a completely nonsmoking restaurant. We recognize that any smoking in our restaurant affects you because we do not have a separate room and separate ventilation system for our patrons who smoke. Please vote each time you come to this restaurant.

Number one, I would like you to eliminate smoking in your restaurant, yes or no. Number two, if you went smoke-free, my patronage of your restaurant would do the following: increase, decrease, stay the same. And then there was a place for comments.

We did this survey for one month. During that period of time, 64 percent of the survey came back that they wanted to have a smoke-free. Now, that doesn't really surprise us, since 75 percent of the people don't smoke, but what was most interesting about the survey was the comments section. There were 25 pages of this size of comments, and they came from families who

only thing did takeout pizza because they didn't want their children exposed.

But even more interesting to me is, I went in each week to collect surveys, were the comments of the waitresses who worked in that place. They would take me aside and say, Please, Vicki, make it come true. And they would tell me about the respiratory problems that they would have.

Fortunately, Sam and Pete Thomas went smoke-free. They, unfortunately, are not able to be here today because they're on vacation, but what they asked me to bring to you was the fact that, number one, yes, their business has increased.

Number two, there were patrons of theirs who smoked that initially left the restaurant; they have come back, the majority of them, because they like the food. They have great food, and that's what they came there for.

And, number three, they see that it's because of the workers; it's not only the people who come in and maybe have breakfast, lunch or dinner, but it was for the workers. One of their

workers has quit smoking, and the workers who still smoke outside, in the back of the restaurant, because they do not allow smoking in the restaurant.

The one other restaurant went smoke-free during this time was the Yu Hsiang Garden, and they actually had an increase, and they got person after person who said, Thank you for being smoke-free.

What we have found in Chestnut Hill is through working with the restaurant owners -- and that's why I thought the idea of you working with the restaurant owners, okay, was a really good idea, that gradually people looked at what was happening, and they listened to the information about what was -- how it was affecting the health of their workers and how in fact that it did not decrease sales, that we have data, we have piles of data at this point, we don't need anymore data. For them, it became an ethical issue, that when you know this kind of information and you continue to allow smoking, you are affecting the health.

What happens is that if you -- you

can't have -- if you have a separate ventilation system for your bar separate from your restaurant, then in fact, you can say smoking in the bar will not affect the restaurant patrons. We know that to be the truth. But when the same ventilation system affects the bar and the restaurant, it has no effect upon the people who are in that restaurant; it is like having a non-chlorinated part of a pool. It doesn't work, okay?

The New York law says that the perimeter of such a restaurant bar is located at least six feet from the perimeter of any indoor dining area of such a restaurant, or such a restaurant bar is separated by a solid floor-to-floor ceiling petition from any indoor dining area.

Paulo Rosso in Chestnut has Hill also put up a wall. That has been what they have agreed to do.

We have five restaurants at the present time that have smoking in their bar only. The problem is that you have to walk through the smoke of that area in order to get into the bar, and in two of those places, the fact is that you have to

sit and wait in that area.

As I see it, I don't want to affect the income of places either. I love my city and I want my city to be successful. But the truth is that we have to look at the health of the individuals who work in these places.

And it is not a peaceful accommodation to have a smoking and a nonsmoking section. You have heard the testimony of our health care professionals. That does is not an accommodation. Unless you have a separate ventilation system, it does not work.

And so I would say please support this, and include the restaurant owners to come up with a compromise that takes care of health of the people of our city.

Thank you.

COUNCILWOMAN TASCO: Thank you very much for your testimony. I appreciate it.

(Applause.)

COUNCILWOMAN TASCO: Ken? Nice to see you here as a restaurant owner, not a staff person.

MR. WEINSTEIN: Nice to see you too.

It feels a little strange to be here 'cause I'm used to sitting up there or over there.

COUNCILWOMAN TASCO: Yes.

MR. WEINSTEIN: But I am in the restaurant business now. My name is Ken Weinstein. I own Chrisham Cottage Cafe, which is a fine-dining restaurant in Mt. Airy., and also the soon-to-open Trolley Car Diner, which will be a 180-seat diner also in Mt. Airy, right up the street.

I guess I have -- I feel like I have a little different perspective here. One is, both my restaurants are, and will be, smoke-free, although we do allow smoking in the patio area, outside, at Crisham Cottage, so I'm glad to hear that there will be a possible exemption to that 'cause I believe that smoke dissipates outside, and we've seen that happen. It's a very different story than having smoking inside.

But I feel like I have a different perspective 'cause I have sat where you are -- not as Councilmembers, but as staff, and I have a sense of public policy and what is right for the City, what is right for the people of the City.

Obviously, it's up to you to make those decisions, you're elected.

But I also have a view as a restaurant owner for the past four years. And Crisham Cottage has done great with allowing smoking. I can only count probably on one hand a number of complaints that we've had for not allowing smoking, and I get weekly comments, usually when people are making reservations, that they insist on having nonsmoking, and they're very satisfied -- more than satisfied once they hear that we are entirely nonsmoking.

Besides having that competitive advantage of not having smoking, which I really believes helps us in some ways, as a previous speaker said, this bill would hurt my business because we do have the competitive advantage now, which we would not when there is no smoking allowed in any restaurant in the City.

I get positive comments from my staff, both smokers and nonsmokers. It is true, at least in my experience, that the majority of restaurant employees are smokers, as far as I've seen, which is interesting. But as I told one full-time

server that I was coming down here today, she said, great, that's wonderful. I said, Vicki, I thought you were a smoker. She said, This is the atmosphere it ought to be in every restaurant, even if she chooses to smoke. She has children and she understands the challenges of going out.

And along with that, on a more personal note, I went to a restaurant last night, which I'm not going to name, which I go to often with two children, who are 3 and 5. Unfortunately, which is typical, I had to take my 3-year-old to the bathroom twice during the meal, and we had to walk right through the smoking section. I came home -- and we don't have a choice. I mean, we talked a lot about choice, but I didn't have a choice; I had to walk him to the bathroom, it was the only bathroom in the restaurant. And I came home and I could smell smoke on my clothes. I know it went into my lungs and into my children's lungs, and that doesn't feel right.

So when we're talking about choice, we need to think about the choice of nonsmokers in this society and in Philadelphia also.

Cleanliness. This gets more into the

diner issue, but when we looked at whether to have smoking or not in the diner, we talked to a number of people, including Dan Zilka (ph.), who's a diner consultant and also runs a diner museum up in Rhode Island. He said in his experience, having talked to hundreds of diner owners over the years, he find constant complaints that the diners have to constantly scrub their ceilings to get the nicotine off and clean more often, and he has gotten feedback that a lot of his diners that he's talked to are going nonsmoking for those reasons and others.

We've had a lot of encouragement, as Vicki already said, as we are a part of the Chestnut Hill Community and Restaurant Association, and we've gotten a lot of encouragement from McNally's going smoke-free, a lot of encouragement from Bob's Diner in Roxborough going smoke-free. And I hear the same reports that business is way up for those businesses.

So I just think we have to sometimes look beyond the self-interests of what we're doing as restaurant owners and look at the larger

picture, the public-policy picture here, that this is just the right thing to do and, that's the only way I can see it.

So if you have any questions, I'd be happy to answer them.

COUNCILWOMAN TASCO: Thank you very much.

Are there any questions?

(No questions.)

COUNCILWOMAN TASCO: Thank you all very much. We appreciate your taking the time to come down to testify.

(Applause.)

COUNCILWOMAN TASCO: Okay. Our next group will be Michael Driscoll, Bruce Nichols, Joe Mallamaci, Prince Gilliard, Fred Nichols, and Pat Coughlin.

(Witnesses come forward.)

COUNCILWOMAN TASCO: Good evening. We'd like for you to proceed. You can decide who goes first.

MR. MCGOVERN: Thank you, Madam Chair. Members of the City Council, thank you for the opportunity to appear before you this evening and

present testimony on the proposed ordinance, which would prohibit smoking in all restaurants.

My name Mike McGovern, and I'm representing the Pennsylvania Restaurant Association and I'm speaking on behalf of and represent over 2500 members of our association operating businesses in over 4600 locations throughout the Commonwealth.

Here in Philadelphia County, we have more than 500 operators. They represent individuals operating both large and small individual and multiple-chain franchise food establishments. Philadelphia County is fortunate to have approximately 2900 eating and drinking establishments employing more than 30,204 individuals, earning more than $363 million a year in wages.

This proposed City ordinance strikes at the very essence of our hospitality industry and in individuals' rights and liberties under our Constitution. In 1988, the Pennsylvania General Assembly passed the Clean Indoor Air Act. Recognized as responsible legislation, it established that restaurants should provide for

their patrons nonsmoking and smoking areas reasonably calculated to address the needs of their clientele. Additionally, these areas could be increased or decreased by the proprietor according to the needs of their customers.

This legislation permits the business owner to decide what works best for his or her business, employees, customers through accommodation and mutual respect for each customer. This legislation has worked extremely well here in Pennsylvania.

Our association strongly opposes any attempt to ban or further restrict smoking in restaurants or in any other food service operation. Our association supports the existing Clean Indoor Act, which requires restaurants with 75 or more seats to provide a nonsmoking section. Restaurants with fewer sections -- or fewer seats have to provide additional smoking and signs indicating that nonsmoking seats are not available. This legislation further provides for the establishment of a smoke-free restaurant, if the owner so chooses.

The Association does not support

legislation regulating individual social behavior. We are in the business of serving our customers, some of whom do not smoke, some of whom do. The current law is working well, and we see no need to further restrict the social behavior of our customers. We believe that by accommodating our customers' needs and offering them choices, the marketplace is responding as it should.

Madam Chairperson, it is extremely important for you to know, and the members of this committee and our patrons to know, that our position should not be interpreted or misinterpreted, that our association is promoting smoking. Quite the contrary. Many of our members are nonsmokers or among a growing number of individuals who have quit smoking. We must remember, however, that smoking is still legal, regardless of our personal preferences.

Our business is the food service and hospitality industry. And as hosts, we strive to serve the needs of all patrons, each of whom have individual needs and varying preferences and expectations. We believe that government-imposed regulations prohibiting smoking in a social

atmosphere are undesirable and unfair. This proposed legislation attempts to legislate social courtesy and abridge individual freedoms at the same time that it discriminates against restaurant and food service establishments by permitting other eating and drinking establishments to facilitate smoking by patrons.

It is interesting to note that since 1988, the Association has not received any complaints about the nonsmoking and smoking sections created under the Clean Indoor Act at our offices here in Philadelphia, in Harrisburg or in Pittsburgh. We have received numerous inquiries for the locations of smoke-free restaurants. It's interesting to note, however, that only 5 percent of these calls are from consumers; 95 percent are from reporters.

The gentleman that testified earlier about the anecdotal information from the California, where he said that the state law ban was preceded by local ordinances failed to recognize or mention that in the town of Beverly Hills, there was a smoking ban passed in 1994, and I do believe the testimony given by the California

Restaurant Association referred to that ban, and it was reversed because of the adverse effect on business. It subsequently was a statewide ban that passed three years later. But it's important to point out for the record that the Beverly Hills ban was reversed and eliminated because of the adverse effect on business.

Madam Chairperson, I would like to comment on three statistically valid studies for your consideration. It was mentioned earlier by several restaurateurs that they did not have empirical data, and I'd like to provide that for them on their behalf.

The economic impact on restaurant smoking ban in the City of Boston, Massachusetts by Dr. David Dollars (ph.), Associate Professor of Economics, Auburn University, and Dr. Jerry Ingram, Professor of Marketing of Auburn University. The key points of the study were:

The smoking ban went into effect in Boston on September 30, 1998. Two months after the ban went into effect, the annualized lost revenue sales from full-service restaurants in Boston are estimated to be over $40 million. It's

important to point out that in this data in the system that they used and the methodology, it registered the sales before the ban went in for three months and subsequent to the ban, which is very important in studies, as some of the colleagues that addressed some of these needs earlier.

The net decrease in final demand for Boston restaurant services will be $40.3 million per year, a decline of approximately 7.9 percent. The estimated combined net effect on the smoking ban law changed to be a decrease in the final demand of $61.5 million for the City of Boston, a decline in earnings of 8.9 million, and a net reduction in employment of 655 employees' jobs.

An $40 million of Boston full-service restaurant business is likely to go to restaurants located outside the city.

Wage and salaries paid to employees of restaurants and bars have decreased by an average of 6 percent.

The average restaurant-bar has decreased employment by about three persons, and tipping of employees has decreased by more than

15 percent.

In the second study, "Smoking and Hospitality Establishments," conducted for the Distinguished Restaurants of North America (DRNA), by Roper Starge (ph.) Worldwide, in June of 1998. It consisted of a telephone survey of 1,008 adults conducted among a nationally represented sample to provide an assessment and understanding of Americans' attitudes toward smoking in hospitality establishments and that either business owners or customers should set smoking policies in hospitality establishments. Nearly 80 percent also believed that good ventilation can have an impact on solving smoking issues.

The findings -- and I will highlight just the highlights of these, they're provided for your in the testimony.

(Above testimony not provided to stenographer for attachment hereto.)

MR. MCGOVERN: 77 percent believe nonsmokers and smokers should be counted in hospitality establishments.

75 percent believe smoking issues can be solved through common courtesy.

81 percent think smoking areas in hospitality establishments should be separate from nonsmoking areas but should be equally as appealing.

77 percent believe either business owners or customer users should be responsible for setting the smoking policy.

And 79 percent believe good ventilation can have an impact on solving the smoking issues.

In the third and final study, smoking issues in Wisconsin, conducted for the Wisconsin Restaurant Association by Chamberlain Research Consultants, the two telephone surveys in March of April of '98, 300 of Wisconsin business owners. The objective of the study was to assess business owners' attitudes toward the current smoking regulations and to search for possible solutions. I will just again highlight some of the findings of that. The particulars are in your testimony that I have provided for you.

68 percent said business owners and managers should set smoking policies and 16 percent said the customer should.

Effect of the smoking ban. 63 said the

business would decrease if a ban were enacted. 72 percent said their business would decline by 20 percent. 57 percent would lay off employees if enacted.

In the attitudes, 81 percent agreed that trying to find ways to accommodate smoking preferences is a better solution to smoking issues than a complete smoking ban.

These studies are pertinent for the results, which overwhelming show that customer preferences should be recognized and accommodated, and that the business owners should determine the nonsmoking and smoking policies in the business establishment. The Clean Indoor Air Act provides the parameters for such action.

The economic results of the Boston study are compelling and should resonate here in Philadelphia.

If I may continue, we're also concerned about those responsible restaurateurs who have invested thousands of dollars in ventilation systems for their customers. One of our Center City members -- not the gentleman who testified earlier -- spent $150,000 on an air-handling unit.

The profit margin for restaurants is only between 3 and 7 percent, and 7 out of 10 gross less than $500,000 per year. Passing this ordinance as it is would simply ignore this type of investment. This owner's investment would be wasted if this proposed ordinance passes.

We hope that Council has considered the following in addition to the above.

The impact on the City revenues from lost business from patrons, conventions, and international trade.

The impact on employees working in the hospitality businesses from lost wages and lost tips.

The impact on City businesses who are near borders where patrons will cross the City line to patronize establishments that will accommodate them. The Boston study particularly acute on this. A Philadelphia tax (unintelligible) goes for the first time seven years ago. One of our northeast restaurants lost 10 percent of their bakery business to businesses across the City line. This lost business has never returned. We feel the same fate will happen

to many business in the City if this ordinance is passed in its current state.

That it could be the first city in the United States to ban smoking in outside restaurants.

And the impact to our travel and tourism business when the City police are in City restaurants enforcing this proposed ordinance, which is provided for in the proposed ordinance.

Our restaurant association and our food service industry are opposed to this proposed ordinance and come here today to tell City Council, as our sister associations have done in many other states, that this is bad public policy. We are concerned that if the City government can legislate individual rights and liberties, that it's only matter of time before those same City governments will start dictating who may and who may not patronize our businesses and restaurant businesses within the City.

In closing, I applaud you, Madam Chairperson, and the members of this committee and the sponsor of this bill for convening this public hearing discuss this proposed ordinance so that

all interested parties could provide their input. We would hope that this committee rejects this proposed ordinance as bad public policy and economic policy and continues to permit our restaurant business owners to be responsive to their customer needs and accommodate those needs in a comfortable, congenial, and convenient dining atmosphere.

Thank you.

COUNCILWOMAN TASCO: Thank you very much.

(Applause.)

COUNCILWOMAN TASCO: Could you tell me what you think would account for the success of the Chestnut Hill restaurants not losing business?

MR. MCGOVERN: Well, I think that was a great story and it's still available anywhere in Pennsylvania with restaurants that can establish a smoke-free environment earlier.

Earlier in my testimony, I did say, and one of the critical things we did when we when crafted the legislation in 1988 in Harrisburg was to make sure that restaurants, at their own

choice, based on their own customer demand, could establish smoke-free environments. I think it's outstanding.

COUNCILWOMAN TASCO: But they didn't lose business.

MR. MCGOVERN: Pardon me?

COUNCILWOMAN TASCO: They didn't lose business to Flowertown.

MR. MCGOVERN: Madam Chairperson, there's other restaurants that provide a smoking environment, and those customers just chose to go to other places. At the same time, if there are individuals -- 74 percent of the population do not smoke, 26 percent do. If a restaurant establishes a smoke-free environment and a portion of those 76 percent who do not smoke wish to patronize those restaurants, they are entirely free and able to do so, and we encourage it.

I think as he properly identified it, it was a niche market that they've explored, and they're very successful at it.

COUNCILWOMAN TASCO: But there are 28 restaurants. The gentleman who had the niche market was down in Center City. The area of 28

restaurants in Chestnut Hill, 20 of them are smoke-free, the others have smoking in the bar, and business did not flee to the suburban area.

MR. MCGOVERN: I think if it works in Chestnut Hill, that's fine. They're appealing to their customer base. And in Chestnut Hill, obviously, the customer base prefers a nonsmoking environment.

COUNCILWOMAN TASCO: Thank you very much.

MR. MCGOVERN: Thank you.

COUNCILWOMAN TASCO: Next.

MR. DRISCOLL: Madam Chairwoman, Councilman Nutter, and members of the committee, please allow me to extend my gratitude for this opportunity to address the committee on this important economic issue for this city. My name is Michael Driscoll, and I'm a principal of Finnegan's Wake Restaurant, located at Third and Spring Garden Streets.

I come before you today as a spokesperson for the Philadelphia Business and Hospitality Alliance. The Alliance, representing the largest industry in Philadelphia, is comprised

of both large and small businesses, taverns, restaurants, hotels, purveyors, merchants, distributors, and newsstands throughout the City. Without your objection, I would like to request that I be allowed to submit a revised and extended version of my testimony for the record.

COUNCILWOMAN TASCO: Sure.

(Above testimony not provided to stenographer for attachment hereto.)

MR. DRISCOLL: On behalf of the Alliance, I testify before you today in strong opposition to Council Bill 314, which is a proposed smoking ban of restaurants, outdoor cafes, and certain taverns in the City. The real issues for the Alliance is the economic viability of thousands of small businesses, freedom of choice, and allowing the marketplace -- just like they did in Chestnut Hill -- to dictate what the market will tolerate, and not government.

As the committee is aware, this great nation was founded in this city on a few simple principles. These principles were drafted at the City Tavern here in Philadelphia. The basis of these principles is that man is endowed with

rights and freedoms of which no government should infringe upon.

Among these is the freedom from government interference. In our nation, we as citizens should not have to tolerate government's infringement upon our ability to provide commerce in a manner in which the market requires. A government that attempts to regulate commerce in contradiction to the will of the marketplace is one which has lost its legitimacy.

The Philadelphia hospitality industry is in the business of accommodation. Our industry makes decisions based on an inclusive strategy rather than an exclusive strategy. This is a simple common-sense concept. If a certain policy, activity, product, or service creates an atmosphere where more people would patronize our establishments, then that policy, activity, product or, service is adopted. To embrace a policy, activity, product, or service where people are excluded runs counter to the philosophy of the hospitality industry.

I myself am not, nor have I ever been, a smoker, but I recognize and respect individual

business owners' rights to choose their own smoking policy.

Council Bill 314 under consideration today is one such policy initiative, which contradicts what the Philadelphia hospitality industry seeks to achieve. Accommodation means that all segments of the marketplace are provided for, which includes smoking as well as nonsmoking patrons. In some areas of Philadelphia, this market-driven accommodation policy has resulted in hospitality establishments declaring themselves smoke-free. In other areas of the City, this market-driven accommodation has resulted in hospital establishments developing accommodations to cater for both smoking and nonsmoking patrons.

The important point to keep in mind is that these accommodations were made not because government mandated regulations, but rather on the basis of marketplace forces in the hospitality industry. It is the Alliance position that these marketplace forces which allow hospitality establishment owners and operators a choice should be the determination on which a hospitality establishment decides its environment.

As a business person representing an alliance of business-minded groups, I will not pretend to understand all of the scientific debates surrounding secondhand smoke. What we as an alliance do understand is that the evidence is inconclusive in the area of health hazards in secondhand smoke. According to a study conducted by the Department of Energy's Oak Ridge National Laboratory in Knoxville, Tennessee, the exposure to secondhand smoke for restaurant employees is considerably below the limits established by the Occupational Safety and Health Administration for the workplace.

There are some who will argue that the EPA concluded in 1993 that it causes lung cancer. What they won't tell you is that in 1998, US District Judge William Osteen (ph.) overturned this report in a summary judgment entitled "Respiratory Health Effects of Passive Smoking, Lung Cancer and Other Disorders."

The Court vacated -- invalidated every part of the 1993 EPA ETS (environmental tobacco smoke) risk assessment dealing with lung cancer. The Court claimed that the EPA has had improper

influence on various organizations that have had the power to regulate or influence regulations concerning cigarette- smoking. It may be politically correct to attack secondhand smoke, but it is not scientifically correct or legally correct.

As an alliance of business people, what we do understand is business economics. We do not need economists to tell us what experience has already taught us. It is the position of the Alliance that this ordinance will only create a loss of business revenue and jobs for Philadelphia.

The statistics are clear as they relate to regions that have enacted smoking bans for the hospitality industry. And in the interest of time, there's a few pages of examples that the various license beverage associations across the states have provided us, and each of them have shown a decrease in business.

The Philadelphia business community will not be the only group affected by a drop in revenues associated with a mandated smoking ban. The City of Philadelphia currently imposes a 10

percent across the bar tax on alcoholic beverages, which is dedicated to the improvement of the City's public schools system.

If a smoking ban ordinance were to be enacted by the Council based on the experiences of those regions which have enacted smoking bans, the schools of Philadelphia will most certainly impacted adversely. If we assume a conservative 20 percent drop in alcohol sales attributed to the smoking ban, the City would lose close to 4 million in the first year. Not only does the City lose, the children lose.

The current economic expansion in many parts of Philadelphia is being driven by the hospitality industry. When we experience the loss of business, similar to the other regions which have enacted smoking bans, expansion of the hospitality industry within the City limits will cease to occur, resulting in the loss of jobs, taxes, business and revenue to the adjoining suburban counties, where business owners and patrons will still have freedom of choice.

There is a wide range of areas this proposed ordinance, Council Bill 314, will

impact. While the intention may have started from a noble attempt at solving a perceived problem, it will have the opposite effect, causing more problems than it revolves. In light of the broad impact this legislation will have in a considerable short time -- three weeks this bill has had from introduction to committee consideration -- we propose that Council reconsider moving forward with the current legislation.

The Philadelphia business community recommends that a working committee on smoking be established. This working group should be comprised of representatives of City Council and Alliance representatives empowered with the authority to develop a reasonable resolution to the numerous issues impacted by Council Bill 314. Such a resolution should take into consideration the concerns from all parties impacted by this proposal. The conclusion of this working group should result in a proposal that makes sense to all parties involved.

In short, on behalf of the Alliance, we would like to reference the letter that we sent to

Councilman Nutter yesterday. And in that letter, we proposed, as I just stated -- we've asked the Councilman to withdraw the legislation and immediately create a public-private working committee to establish a policy which would have broad-based appeal.

Thank you.

COUNCILWOMAN TASCO: Thank you very much.

(Applause.)

COUNCILWOMAN TASCO: Thank you.

Mr. Nichols?

MR. NICHOLS: Thank you, distinguished members of the committee. I want to thank you for this opportunity to present the views and concerns of the Greater Philadelphia Restaurant and Purveyors Association, the GPRPA. My name is Bruce Nichols, the incoming president of GPRPA and the owner of Museum Catering Company.

GPRPA represents 350 members, consisting of large and small restaurants, distributors, and suppliers throughout the City. We and our members strongly oppose Council Bill 314, the proposed smoking ban. GPRPA is concerned

about the economy of the City and the viability of our members, and we view Council Bill 314 as a anti-business, anti-freedom of choice bill. GPRPA members strongly believe in allowing the marketplace to dictate what the market will tolerate, and not government.

And I'd like to say that the example that was given by Chestnut Hill about the restaurants in Chestnut Hill, I think, is one of the best examples you could come up with for allowing the marketplace to work on this issue of smoking, as opposed to trying to legislate it.

GPRPA members make a living accommodating our customers. Most business decisions are made with an eye toward including as many potential customers as possible. Discriminatory policies, such as Council Bill 314, run counter to the philosophy of the hospitality industry itself, which is to embrace service and accommodate our patrons. The bill under consideration today is one such initiative which contradicts what the Philadelphia hospitality industry is seeking to achieve. Accommodation means that all segments of the marketplace are

provided for, which includes smoking as well as nonsmoking patrons.

In some areas of Philadelphia, this market-driven accommodation policy has resulted in hospital establishments declaring themselves smoke-free. In other areas of City, this market-driven accommodation has resulted in hospital establishments developing accommodations to cater both to smoking and nonsmoking patrons.

The important point to keep in mind is that these accommodations were made not because of government-mandated regulations, but rather on the basis of marketplace forces in our industry. It is the Alliance's position that these marketplace forces should be the determination on which a hospitality establishment decides its environment. The issue here is freedom of choice. Customers are free to choose a smoking or a nonsmoking restaurant.

Virtually all of the restaurants affected by Bill 314 have either separate smoking areas and rooms or have opted to remain smoke-free. No one is ever forced to go to a smoking restaurant. People vote with their feet

every day in choosing where to dine. That's how it works in America. And this is how it will work in Philadelphia under Council Bill 314: smokers in Eastwick will eat out in Upper Darby, smokers in Chestnut Hill dine out in Flowertown -- I think they will, Madam Chairwoman. And smokers in Overbrook will head out to Narberth. Is this really healthy for Philadelphia's economy today?

Certainly smoking is a controversial issue that arouses passions on all sides. Fortunately, most smokers are tolerant and considerate of nonsmokers and use good judgment when and where to smoke. Some do not. Most nonsmokers are tolerant and considerate of smokers and simply avoid smoking areas if it bothers them. Some do not and are offended that anyone smokes anywhere.

At a time when our society is seeking tolerance, diversity, and acceptance of behaviors that may be different from our own, it seems out of character to target smokers with so many restrictions and, in instances, with such disdain.

I am a former smoker, who, shortly after starting our work at the University Museum

in 1989, eliminated all cigarette-smoking at events in the galleries, but I believe Council Bill 314 is way out of line for Philadelphia. As a business owner, I feel I am fully capable of evaluating the needs of my customers and employees, and I resent government limiting who I may serve, especially when the competition does not have to operate under the same rules.

I have devoted my hospitality career to being inclusive and welcoming and serving all customers. For the City of Philadelphia to prohibit my ability to accommodate smokers -- approximately 30 percent of the adult population -- is grossly unfair. Remember that people get to choose where they eat and where they work.

Thank you very much.

COUNCILWOMAN TASCO: Thank you very much.

COUNCILMAN NUTTER: I'm sorry. I was away, I think, when you came up to the table or when Councilwoman introduced you. Is it Mr. Nichols?

MR. NICHOLS: Yes. Bruce Nichols.

COUNCILMAN O'NEILL: Okay, all right.

One of the comments you made, I just wanted to try to get a better understanding of. Is there something in the bill that you feel prevents you from having smokers in your restaurant or specifically prohibits smokers from coming in your restaurant?

MR. NICHOLS: Not at all.

COUNCILMAN NUTTER: People who happen to smoke?

MR. NICHOLS: I think I'm emphasizing the matter of choice. We want to preserve choice for restaurant owners, people who run special events, and for our customers.

COUNCILMAN NUTTER: Okay.

MR. NICHOLS: And we feel that the bill would make it impossible for that to be the case anymore, sir.

COUNCILMAN NUTTER: Why is that?

MR. NICHOLS: We won't be able to serve smokers.

COUNCILMAN NUTTER: You wouldn't be able to serve smokers, or smokers wouldn't be able to smoke at the time of dining? What is it that stops a smoker from coming in? I mean, do smokers

not go to places where they can't smoke?

MR. NICHOLS: Do they go to places where they can't smoke?

COUNCILMAN NUTTER: Yes.

MR. NICHOLS: Um, not my wife.

COUNCILMAN NUTTER: Does your wife fly?

MR. NICHOLS: Pardon?

COUNCILMAN NUTTER: Did your wife ever fly, is she afraid of airplanes?

MR. NICHOLS: No.

COUNCILMAN NUTTER: Does she fly?

MR. NICHOLS: Oh, she does fly, yes. I thought we were talking about restaurants.

COUNCILMAN NUTTER: You can talk about restaurants, you can talk about movie theaters, you can talk about -- do you go to the Academy of Music?

MR. NICHOLS: (Witness nods.)

COUNCILMAN NUTTER: Do you go to the Convention Center?

MR. NICHOLS: Mm-hmm.

COUNCILMAN NUTTER: Do you ever smoke in the Convention Center?

MR. NICHOLS: No.

COUNCILMAN NUTTER: Okay. They have a smoke-free at the Convention Center, right?

MR. NICHOLS: I have a smoke-free policy where I work.

COUNCILMAN NUTTER: All right. I mean, was just trying to understand why you couldn't serve the smoker, and maybe I missed the tail-end of it. I think I understand -- I mean, I got your basic point, I understand.

Let me ask this question. Well, I think, Mr. Coughlan, you haven't had a chance to testify, right?

MR. COUGHLAN: Not yet, Councilman.

COUNCILMAN NUTTER: Okay, go ahead. Sorry.

MR. COUGHLAN: Thank you. My name is Pat Coughlan, C-O-U-G-L-H-L-A-N. I am the President and Business Manager of the Hotel Employees/Restaurant Employees Local 274, and I find it extremely different for me to be sitting here with leaders in the business community. It's a rather unique experience.

COUNCILMAN NUTTER: Welcome to City Hall.

MR. COUGHLAN: But I have testified here on a number of other matters over the years.

And one of the things strikes me about this is, I've heard testimony from people about what happened in California, what's happened with workers. One thing that I think we're missing is that ten years ago, or nine years ago, there was a war, and tourism died across the country. Once the Gulf War hit, tourism died. This City was decimated because we did not have a Convention Center, and with that and the combination of the Gulf War, we were dead in this city.

When we hook at Los Angeles, in addition to what they went through with riots and the earthquake and things like that and the war, well, they had nowhere to go. When we heard from the Health Commissioner that once they passed this smoking ban, tourism went up. They had nowhere to go but up, and the same with some other cities.

Hospitality workers, I've heard some statement on, and yet we represent hospitality workers. And I can honestly state that we have not had workers coming to us filing grievances or complaining about smoking environments in the

restaurant or nonsmoking. We have had members come to us and say that they did not get a chance to work in the smoking section of the restaurant and the checks are usually higher in the smoking sections of the restaurant, so we have had that grievance, but we have never had a member come to us and say they were sick from working in the smoking section.

If there is a committee -- if Councilman Nutter forms a committee that some other people have asked about to look at this and see if there's a workable solution, I will commit to you today that Local 274 will survey its membership, we will survey 100 percent of the membership and share those results with that committee if that committee is formed.

A few years ago, we learned from the Rendell Administration -- the Rendell Administration came in and used some of those other cities. If we increase the tourism dollars, the tourism advertising revenue, then tourism dollars will increase in Philadelphia, but yet the Health Commissioner said that other cities increased their tourism from putting smoking

ordinances into place, and I find that hard to believe.

COUNCILMAN NUTTER: I don't think the Health Commissioner made the direct causal effect. I think --

MR. COUGHLAN: He said in Los Angeles, New York, once they passed those ordinances, their tourism increased, and I find that a little hard to believe.

COUNCILMAN NUTTER: Well, I mean, as a supporter of this general effort, I mean, I would not -- I mean, I've cited some of the studies. I don't necessarily know if there is a direct cause and effect. There could be.

I think what people having been trying to explain is that as there is tremendous concern about a decrease in business, I think what folks have tried to do is look longitudinally over a decent amount of time what happened in the year or the months leading up to a prohibition in a particular city and then what happened afterwards. I mean, I think that is the only legitimate way to take a look at this, and it should be over some relatively decent period of

time.

And if the facts are that you are at X-millions of dollars a year before and two years later, you're at X-millions of dollars, I think primary conclusion out of that is, you didn't lose money.

MR. COUGHLAN: But you have to look at all of the effects. I mean, Los Angeles --

COUNCILMAN NUTTER: Well, there are million and one other things going on out in the environment that you have no control over.

MR. COUGHLAN: Los Angeles was quoted extensively by a couple of speakers, and yet, that was city that incurred riots, had to recover from the Gulf War, as did other cities, had an earthquake. So tourism was down in that city, it had nowhere to go but the but up. And to say that a smoking ban helped business in that city, quite frankly, Councilman, I find that very hard to believe.

COUNCILMAN NUTTER: I don't think anyone's trying to make the case that a smoking ban helps. If some promote that, I mean, that's their business.

I think that any of that statistical information is merely for the purpose of trying to give anyone some level of assurance that things did not take a downturn after that particular point in time. Cities go up, cities go down for a wide variety of reasons, but I think there has been some legitimate attempt by people who are in the social science business or in the business of conducting studies to take a snapshot of what happened of what happened, what was going on before, what happened at that moment, and what happened afterwards, and try to evaluate. As the other side has said, Well, there's going to be either a precipitous drop in revenue, employment, and a whole host of, you know, kind of calamities, with virtually no evidence.

So, I mean, there's an attempt to provide evidence on both sides, or it's primarily done by phone surveys asking people what did they think, as opposed to what are the real tax receipt revenues and how you measure whether business is up or down.

I mean, I don't think anyone -- I mean, the federal government, I think, or even the city

government doesn't ask you to give us an estimate of what you made last year; we asked what did you make? and you ask people for W2 forms and their receipts and everything else. I mean, you know, John Kennedy said, "Trust everybody, but cut the cards."

I mean, your impressions of what happened are one thing. In business, generally the tax receipts tell us the final story. I think that's all anyone is trying to explain with the various studies and statistics, and I'd be interested to get a copy of the Boston study. I think, Mr. McGovern, did you mention that in your testimony? I would love to have a copy of that if you have one available.

MR. MCGOVERN: I will forward one to you.

COUNCILMAN NUTTER: That would be great, thank you.

I'm sorry to interrupt you.

MR. COUGHLAN: In addition to some of the other concerns, I think it's a common-sense matter. I think people should be allowed to go into the restaurants, I think the restaurant

owners, the hotel operators, the businesses should be able to state whether or not they want a smoking environment or a smoke-free environment.

You know, how crazy do we get? I mean there are signs in every bar in this city, restaurant bar, hotel bar, or a stand-alone bar that says drinking is harmful to people -- to women who are pregnant. Do we outlaw drinking to women that are pregnant? How far do we go with laws like this?

Restaurants. The National Heart Association has referred to fettuccine Alfredo as "a heart attack on a plate." Councilman, that's one of my favorite dishes. Are we going to outlaw that next if some association says it's a bad dish to eat, unhealthy? Where do we draw the line with some of these things?

COUNCILMAN NUTTER: You draw the line if something is proven injurious to somebody's health, and the government does have some responsibility to step it.

I don't think that you would want to be in a situation where you subjected your workers potentially PCBs, benzene, or formaldehyde in the

work space and say, Well, you know, it's really just kind of over to the side and, you know, hopefully, none of it will splash on you and, you know, forget about the fact that it's not in, you know, a sealed or an appropriate container. You know, again, I think the government has some responsibility to step in for that.

MR. COUGHLAN: Okay. But if that's the case, Councilman, then let's look at trash trucks and trash men standing behind the trash trucks with the exhaust, breathing that in for eight hours a day. I mean, where do we really go with this?

COUNCILMAN NUTTER: Well, one of the places that you go is that the EPA announced just the other day, and I think the business community supported it, that they're going to change the requirements with regard to diesel fuel. Why? Because it is injurious to people's health, the current fuel that's out there.

I mean, I understand your point, and I don't want to go to the level of absurdity. If you want to have fettuccine Alfredo, have a couple plates. I mean, I might take you out one night.

I mean, I don't think you can compare fettuccine Alfredo to secondhand smoke, which is a Group A carcinogen. I mean, there's just no comparison.

Councilman Rizzo says that if he cooks it, it might be close to a Group A carcinogen, but I don't believe that.

(Laughter.)

COUNCILMAN NUTTER: And I'm sure his mom would not let him -- if Mrs. Rizzo cooks it, it's fine.

Please continue.

MR. COUGHLAN: There are people that will choose to go to a smoke-free restaurant, just as there are people that will choose to go to a restaurant that allows smoking.

I am a nonsmoker, it doesn't come into my decision making to whether it's smoke-free or smoking.

Councilman Ortiz had asked earlier what data was there for people that would just leave the City, and I don't know what the data was there. But I will tell you one personal story. I am married a little over 21 years. My wife grew up around the corner from this gentleman's

restaurant. For at least once a month, I have been to Tony's Place for pizza on a Friday night, and if my wife cannot end her night with a cup of tea, an amaretto and a cigarette, I will tell you this: I will be driving to New Jersey or to one of the suburbs so that they she can do that, and I won't have a choice in that matter then.

So I don't know if personal data means anything, but I know I would rather spend my money in Philadelphia, I would rather stay here, but if this ordinance passes, I can speak from personal experience that I would have to go out somewhere.

COUNCILMAN NUTTER: Okay, thank you.

COUNCILWOMAN TASCO: Next. Sir?

MR. MALLAMACI: First of all, I'd like to start off with saying I certainly don't want to lose my colleague's business.

My name is Joe Mallamaci and I am President of the Licensed Beverages Association of Philadelphia, also known as the United Tavern Owners. Our association represent over 400 members, consisting of liquor licenses in the City of Philadelphia, which includes taverns, restaurants, delis, and clubs, employing nearly

4,000 people full-time and part-time.

Madam Chairperson, members of the committee, thank you for allowing us to present our views concerning the proposed legislation to ban smoking in most public places.

I am a second-generation of Tony's Place, a restaurant-bar in the Mayfair section the of the City. I employ 22 people and serve an average of 250 customers per day. We've been in the business 48 years and have seating in both the dining room and the bar sections of the restaurant for over 150 people. Approximately 65 percent of my business is food, 35 percent is beverage.

This proposal would be devastating to my business. Because 65 percent of my business is food, this bill will effectively eliminate smoking in my establishment, where 50 percent of my customers are smokers. They will be forced to go elsewhere and I will be penalized because dad and I spent 48 years building up the food business.

My clientele is working-class individuals who like to stop after work to relax, eat, and socialize with friends. In September of 1999, in a business decision, after much

consideration, I elected to have my dining room area nonsmoking. After eight months, my dining room area, which is a nonsmoking section, always has tables available for immediate seating. While bar area, which is smoking section, there is a wait for available tables. It has been my experience that a large portion of my customer base would rather wait to be seated in the bar area to dine.

Madam Chair, we understand that cigarette smoking is annoying to many people, and as a business person, I make it my business to accommodate my nonsmoking customers to make sure that we maintain a healthy environment through smoking and nonsmoking sections.

Regarding the issue of secondhand smoke, there are many studies which support the claims of both sides. Hospitality operators should be allowed to choose their environment, and that might include improved ventilation systems, nonsmoking sections, and other steps that are voluntary, not government-mandated. Market forces will determine under what condition smoking is allowed. Government regulations will make matters

worse and enforcement will be impossible.

In survey after survey, the general public wants accommodation of both nonsmokers and smokers. Please allow the marketplace to decide individual smoking policies in our industry. On behalf of the members of our association and for the betterment of the hospitality industry in the City of Philadelphia, I ask that you vote no on smoking bans in licensed-beverage establishments.

Thank you very much.

COUNCILWOMAN TASCO: Thank you very much.

Mr. Gilliard.

MR. GILLIARD: My name is Prince Gilliard and I'm the owner of the Prince 1500 Lounge.

First, Madam Chairperson, let me just thank you for giving me the opportunity to testify here this evening. Let me say at the outset that I don't smoke and I won't actually be affected by the bill because only 15 percent of my business is food, but I'm very concerned about the other operators in Philadelphia in our alliance. We're already losing a great deal of business and

revenues to Atlantic City and have over the past several years had a great many new regulations forced into our industry.

We've had the loitering bill. In this bill, we took three buses to Harrisburg to defeat this particular bill. We've had the 10 percent liquor tax. There's been other regulatory bills, including the fire alarm bill, the mandatory trash disposal regulations, and now a smoking ban. All of these government mandates have been imposed on the industry, and they have really hurt. This legislation, if passed, will also hurt the 10 percent liquor, because there certainly will be a decrease in business.

The smoking issue should be left up to the individual business owner. This bill also makes the restaurant owner a policemen, telling people they are smoking within 20 feet of their tavern. It's a fact that there's a steady decline of licensees, and that's because of the tougher legislation being imposed upon the industry.

The business owners must have the ability to decide smoking policies based on market conditions. Owners aren't going to allow smoking

if it chases away customers. That's why this bill is not necessary.

Regarding the health effects of smoking, there are studies on both sides of the issue as to the effect of secondhand smoke. The issue is certainly not clear-cut.

Some restaurants are already smoke-free, have restricted smoking in specific areas. Government didn't mandate these discussions; the owners did. Smoking and nonsmoking sections work very well for customers, and most people support that system.

Make no make about it. This is a anti-business law, and it will impose great hardship on the Philadelphia restaurant industry. Retail outlets and sales of spirits and wines are constantly decreasing in Philadelphia. Let me just say, the speakeasies flourished because of the increased price of drinks and the legitimate licensed outlets. Economically deprived neighborhoods are prime locations for speakeasies that have no regard for hours of sales, sell to minors, problem drinkers, smoking regulations and Board of Health requirements.

And let me just say in closing, let me just take an exception to one the prior speakers this evening. He said that nonsmokers stay home. That's not true in polling my membership, and they know their customers better than anyone. They say that over 70 or 75 percent of their customers are nonsmokers.

So in closing, Madam Chairperson, I would ask you and the committee to think seriously about this legislation and maybe we can get together the Alliance and reconstruction.

COUNCILWOMAN TASCO: Thank you very much. Speakeasies are illegal and we'd like to know where they are so we can close them down.

Thank you all very much for your testimony, and we appreciate it very much.

We now have a few more restaurant owners we'd like to forward. Wren Ingram, Terry McNally, Andrew Simpson, Harris Eckstut, and Johnny Della Polla (ph.).

MR. DRISCOLL: Can ask a question? I represent the Alliance, which is the hotels and the restaurants and the bars and the taverns, and some of them have to go. Would you be able to at

least explain to them procedurally how this works from here on.

COUNCILWOMAN TASCO: We'll let Councilman Nutter talk about what he plans to do with this piece of legislation. It is his bill, and the Chair, along with other colleagues, will follow his lead -- or he will follow our lead.

COUNCILMAN NUTTER: Yeah, I will be following you, Madam Chair.

COUNCILWOMAN TASCO: You've seen all the commotion and the discussion back and forth up here, so he will announce what the position is.

MR. DRISCOLL: Speaking on behalf of members of our alliance that are still here that haven't testified, they would be interested in foregoing their testimony perhaps if they were explained procedurally how the rest of the evening goes.

COUNCILMAN NUTTER: I appreciate that, and a funny thing happens on the way to putting together a witness list and you think you'll stay within a relatively short period of time.

There are a few proposed amendments to the bill which I will, probably after the next

panel, read into the record. And as a general parliamentary courtesy, Members will be asked to adopt those amendments. There are portions of the bill that need to be removed, there are items that I would like to insert as a result of conversation and contact with people in the industry that hopefully might make the bill somewhat more palatable.

The bill would then be left in committee so that we can have those future continuing discussions. But what happens when you amend a bill in committee, the Chief Clerk's Office will reprint that bill as amended, and so issues like sidewalk cafes, which I will propose to be removed from the bill, will no longer be an item of discussion because they won't be in the bill at that point in time, because the current form of the bill -- the official form of the bill would be the form as amended by the committee.

But the bill will stay in committee, I will contact you directly if you're going to continue in the capacity of representing the Alliance. And a number of my colleagues, I think, have an interest in future discussions about this.

And so we expect to continue the testimony, but shortly after the next panel, I'll read into the record proposed amendments that I have and that I can support at this point in time.

MR. DRISCOLL: And would it be okay if some of our members then forego their testimony and just submit it.

COUNCILMAN NUTTER: That would be fine. The question that you are too polite to ask is, you're worried that if people leave, is something, you know incredible or inappropriate going to happen? The answer is no. I think that the --

(Applause.)

COUNCILMAN NUTTER: I haven't gotten one of those all day. If you could start that back up, I'd appreciate it.

(Laughter.)

(Applause.)

COUNCILMAN NUTTER: I should have asked for that three hours ago.

I think when people hear what the amendments are, I mean, whether they still like the bill or not will be a whole different story,

but I think people will be pleased with the items, some of which are coming in, some of which are going out. And then we can continue the discussion, but at least it's in a forum that allows for more legitimate dialogue.

MR. DRISCOLL: Very good. Thank you, Councilman.

COUNCILMAN NUTTER: Thank you.

COUNCILWOMAN TASCO: We won't report the bill out of committee when you leave out the door. Bottom line.

Okay, so we'd like Kristine Housenkraft and Karen Kennedy and Beverly McIntosh and Sue Ryan and others to stay, and we will call you up after this panel.

(Witnesses come forward.)

COUNCILWOMAN TASCO: Good evening.

MS. MCNALLY: Good evening.

COUNCILWOMAN TASCO: Would you like to start? Who's first?

MS. INGRAM: I'll start. I'm Wren Ingram, and I am representing Fork Restaurant. The owner of Fork Restaurant was unable to be here, so I'm going to read her statement.

"Unfortunately, I am unable to be present at today's hearing, but I have asked that this statement be read as my testimony against the proposed anti-smoking legislation. My name is Ellen Yin, and I am co-owner of Fork Restaurant, at 306 Market Street, in Old City, Philadelphia. We operate a 68-seat restaurant that allows smoking in a designated smoking section with the bar and in our unenclosed outdoor cafe.

"Let me preface my comments with the fact that I am an adamant nonsmoker who fought against smoking through employment by the American Heart Association and American Cancer Society prior to changing careers. However, as a restaurateur, I feel this bill cannot possibly be approved as it stands without further discussion with the hospitality community whom it directly impacts.

"Fork falls into the category of fine dining. However, being in Old City, we do have a thriving bar business. Our sales are such that only 30 percent of our total business is derived from alcohol. Therefore, we would be required to ban smoking in entirety inside and in our outside

cafe.

"Fork will not be able to survive without changing the economics of its business. Restaurants such as Fork that are located in neighborhoods that are caused by a vibrant lifestyle will lose business to establishments where smoking is permitted and in Old City, where there are potentially lots of alternatives.

"Fork seats people until about 11:30 p.m. On the weekend and often serves clientele who are just beginning their night out on the town. This late seating provides a significant revenue to the restaurant. If we lost that seating on Thursday, Friday, and Saturday nights due to the nonsmoking, we would lose as much as $275,000 that would not be offset by any significant cost savings in labor, operating, costs, etc.

"The margin on successful restaurants is only typically 5 to 10 percent. So at Fork, that would force us to operate at a loss, requiring us to change the entire concept of the restaurant, raising prices from moderate to high to make up this income, and these prices are not guaranteed to be accepted by our clientele and

puts the restaurant in a position of potential.

"Fork does serve a significant number of people at the bar for dinner. While many diners at Fork are nonsmokers, there are a significant number of clientele who dine at Fork because we do have a smoking section. We chose to offer a smoking section even though the restaurant is moderately small because the neighborhood has a significant number of smokers, and Fork is a neighborhood restaurant welcoming all.

"To accommodate both smokers and nonsmokers, I installed four smoke-eaters to be hospitable and sympathetic to smokers and nonsmokers. In two and a half years, I have never personally felt the restaurant to be uncomfortably smoky, nor has the restaurant failed to accommodate who is extremely sensitive to smoke."

In the interest of time, I'm just going to just go to the end of this.

"Anti-smoking legislation is inevitable, but it should be implemented in thoughtful manner to be accepted by all. Plans for monitoring and implementation should include input from those of us who will be required to

enforce the law. Philadelphia is not ready for the bill as it stands.

"As a restaurant, we try to be accommodating to all, regardless of race, sex, age, or income. The City's recent attractiveness is based due to, in part, to the development and success of its tourism and hospitality industry. The bill dampens the spirit and is insulting to the industry. We make significant contributions to the tax base of this city. So first it's the liquor tax, now it's nonsmoking. The incentives to enter this difficult, risky, time-consuming business are slowly deteriorating.

"Thank you for your consideration. Ellen Yin."

And on a personal note, I seem to be the only person who either smokes or will admit to smoking. Yes, I can take an eight-hour flight with not having a cigarette, and I don't even think about it. I can go to the Convention Center and not even think about it. However, when it is time for me to go out to enjoy an evening out, I do enjoy having a cigarette, and I have not gone to the Square Bar because they did not allow the

smoking.

I go -- I used to work at Rouge. I opened Rouge as a bartender, and the one thing that I did find that worked -- Rouge is nonsmoking until 11 o'clock. From 11 o'clock on, it's smoking. I could always tell without ever looking at my watch that it was about 10 minutes to 11 'cause everybody was ready. But it worked. People would wait and would just go someplace else and then they'd come in at 5 minutes to 11 and then fire 'em up at 11 o'clock. But there are people who will decide not to go into smoking (sic) restaurants, because they do enjoy smoking.

Thank you.

COUNCILMAN NUTTER: Madam Chair?

COUNCILWOMAN TASCO: Yes.

COUNCILMAN NUTTER: I'm sorry. I just -- I hate to -- I need to put one.

COUNCILWOMAN TASCO: Just a second. Could we please have sidebar conversations toned down, please. My colleagues.

COUNCILMAN NUTTER: Right, as well as Councilmembers.

COUNCILWOMAN TASCO: As well as

Councilmembers. It's distracting.

Thank you.

COUNCILMAN NUTTER: Thank you, Madam Chair.

I appreciate the testimony. And if you could take back to Ann, I think she had called in the day that I was on NPR with Marty Moss-Cohane. She was very nice, and tell her I appreciate the treatment that she gave.

With regard to what I announced earlier, I need to -- the panel that was up before and even some of the folks who are at the table now, a great amount of the testimony has revolved around this issue of the bar business, the business at the bar versus the business in the dining room, and that many people have made their dining rooms either completely smoke-free or somewhat smoke-free, but they're really very concerned about the bar area.

The two basic questions are, one, are people in the industry at a point where they could accept, or would be willing to accept, a complete smoking prohibition in the dining areas, completely? And, second, how do you propose to

deal with the separation issue between smoking at the bar and no smoking in the dining area, and how do you keep those two areas virtually separate from each other, short of, naturally, enclosing one area and physically by barriers and walls separating the two?

That is -- that has been, I think, for most of the afternoon into the evening one of the dilemmas that we have faced, and so I need to ask that question and have it on the record, and that certainly will have to be a part of the ongoing discussion as we move this forward.

Thank you. I appreciate it. Sorry about that.

MS. MCNALLY: Thank you. I don't think I have anything to say that hasn't been said, so I'll make it quick.

Members of the Council, thank you for taking the time to listen. The restaurant industry has --

COUNCILWOMAN TASCO: What is your name?

MS. MCNALLY: Oh, I am Terry McNally. I own the London Grill in Fairmount, Art Museum,

Spring Garden, historic.

The restaurant industry has gone to great lengths to serve our City residents and our visitors without exclusion. We are not a theater, we're not an airplane, we're in the consumption business. Food, wine it's consumption. I just wanted to make that differentiation. People tend to smoke and eat, that's the way it.

As I said, I'm the owner of the London Grill, and I'm going into my tenth year. I've recently took a mortgage on the property so that I can stay there. I live next door. I'm raising my son, he goes to school, I'm well invested.

I know that 60 percent of my customers are regulars. I know that a third of them smoke. How am I going to continue the quality of service and the level of comfort that they're used to? London has been there far more than I've been there. I'm seeing the same people over and over.

It is my job as a restaurant owner to fulfill my guests' needs and wants, as well as to anticipate them. It has been my choice to operate the kind of establishment I have. It's a fine-dining restaurant, a neighborhood pub. If I were

in it strictly for the revenue, I would not be running this kind of restaurant. I love it. It's hard, I love it. We provide a service, and smoking sometimes comes along with it.

We made all of our dining rooms, and my bar is smoking. I've spent thousands of dollars on ventilation systems. I don't know if they work well. I spend every day cleaning the cells. It's a real pain, it's costly, but we do this because we want to accommodate our smoking regulars. I know they would not come back if they couldn't smoke, I know this, I've been there almost ten years.

I'm a private business serving the public. When my guests are with us, it is their personal time. No one is forced to come into my establishment. I think that it's a choice decision -- that's all been said.

We have neighborhood restaurants that are nonsmoking, and some of my customers will go there on other nights, and we think that's terrific.

That's pretty much it. I just ask you today to consider the needs of the Philadelphia

hospitality industry when casting this vote. I would like to see more process, some sort of compromise, that's all.

COUNCILWOMAN TASCO: Thank you very much.

Yes?

MR. SIMPSON: Thank you for allowing me to address you regarding our opposition to the proposed smoking ban. My name is Andy Simpson, and I'm the Area Director for four TGI Friday's restaurants in the City of Philadelphia. I employ over 400 people in those four restaurants, a lot of which were here today earlier. Unfortunately, unlike some of the experts, they weren't being paid and they had to get back to work, so I apologize that they're not here supporting me at this time. We also serve around 20,000 guests a week in those four restaurants.

I'm here to give you the facts about the proposed smoking ban and the effects it has on our guests, our employees, and the City as a whole we have TGI Friday's restaurants in California and in other places around the country that have passed similar bans, so I'm sharing with you

actual data, some of which is shared in this information that you have here, which was provided by the National Restaurant Association. It's not hypothetical information; it's actual stats from various restaurant companies. And our specific restaurants in California did take a significant drop in sales, as they did in Massachusetts.

The three areas I'd really like to focus on are a person's right to choose, which we've heard a lot about today; the ventilation systems in our specific restaurants; and he economic of the ban.

First, we believe it's a person's right to choose to smoke and we run our restaurants according to the needs of our guests and our employees. Employees in our restaurants have the choice to work in a nonsmoking area or in a smoking area. We never assign employees to a smoking section before getting their permission. In fact, many employees prefer to work in the smoking area because they actually get more tips that way, because people that general smoke and drink in our restaurants stay longer, they have after-drinks and they tip. And that's a fact.

Depending on our guest feedback and needs, we accordingly set up the right percentage of smoking and nonsmoking areas, and we have done that. We also care about our guests, and want to accommodate both people who choose to smoke and those who do not. Smoking is legal in this country, and our customers should be the ones to decide whether they would like a cigarette after dinner, not the government.

Secondly, we spend, along with other restaurants, thousands of dollars in each of our restaurants on ventilation systems to keep the air clean inside our restaurants. We want our guests to be comfortable in our restaurants so we have a system that pushes the old air out and brings fresh air in; it's not re-circulated air. We have provided well-ventilated nonsmoking areas in our restaurants for years, and in most occasions, we have separate rooms that are designated as smoking areas with specifically separate ventilation system, as is the case in City Line Avenue Fridays.

Finally, the pending proposal to ban smoking would not be without substantial financial

impact on our employees and our restaurant in Philadelphia and I believe to the City. We can learn from the history of those cities that have adopted similar bans. It's proven that restaurants in those cities have lost business to bars and other restaurants outside of the city limits. And the proposal, as written, will give an unfair to bars and taverns and to those restaurants outside the City limits. City Line Avenue has a restaurant stone's throw across the highway that does not pay 10 percent liquor tax and would not be imposed on the smoking, and would get a lot of my guests and employees.

In fact, in New York City, after the smoking ban took effect, 67 percent of restaurateurs surveyed said their sales declined an average of 19.9 percent. When sales drop, so do employees tips and potential wage increases, not just for front-of-house employees but for back-of-house employees as well. Many restaurants may have to cut jobs if sales decrease due to the smoking ban.

The City would also lose revenues. You've heard today that 10 percent of our beverage

sales go to the City in beverage tax for education. If we lost approximately 20 percent of our beverage sales from my four Fridays, the City would lose $80,000 a year. You'd be faced with levying those taxes elsewhere and attempt to make up that shortfall for education.

So the people who choose to smoke would just leave the City limits and go to restaurants and bars where they can smoke. Our guests and the market should determine and dictate how we run our restaurants, and I assure you that we will continue to respond to the needs of our guests as they dictate whether they want a smoking or a nonsmoking environment. And I urge you to oppose any smoking ban for the good of the City of Philadelphia as well as for our employees.

Thank you.

COUNCILWOMAN TASCO: Thank you very much.

We've heard a lot of discussion today about ventilation and closing off the dining room for nonsmokers. And do you think this was done because you responded to your customers' wishes?

MR. SIMPSON: Absolutely.

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COUNCILWOMAN TASCO: Through the years?

MR. SIMPSON: Yeah. The difference with some of the testimony that we've heard today and some of, like, the potential amendments is that I have smoking areas -- dining areas as well as smoking in the bar. I'm not fine-dining restaurant, I don't have a smoke-cocktail bar that serves a couple martinis and a cigar. I have a big bar, a big smoking area as -- you know, in some instances, close to as big as the nonsmoking areas.

But as we go forward and people demand nonsmoking areas, we change our restaurants accordingly.

COUNCILMAN RIZZO: Could I add to that? I was impressed with what you just said about the way you configured your ventilation system. I have a little knowledge of HVAC, and probably what you described, bringing in outside air is probably a very expensive way to do business because you're bringing in air that's 80, 90, maybe hotter and have to cool it.

MR. SIMPSON: Correct.

COUNCILMAN RIZZO: So re-circulating air has been a trend in the industry to keep energy costs down. And many of the restaurants that I've talked to say that they could not configure their systems to do what you've done, but I'm sure that eventually, they'll be able to do more.

But I just wanted to point out that your effort to bring in outside air rather than re-circulate the interior existing air that could be contaminated with smoke is obviously costing you more money to operate that system.

So it's great that you've done what you've done to try to make it a better situation.

MR. SIMPSON: Thank you.

COUNCILMAN NUTTER: I apologize. I was out for a second. Please, I won't take you back through all of your testimony. Just tell me the name of your --

MR. SIMPSON: My name is Andy Simpson. I'm the Area Director for TGI Friday's restaurants in Philadelphia.

COUNCILMAN NUTTER: Oh, you're the Friday's, okay, all right.

MR. SIMPSON: You probably heard from some of my people this week.

COUNCILMAN NUTTER: Well, I heard from somebody who was -- I don't know whether it was you or someone else from Friday's, who was fairly aggressive in their --

MR. SIMPSON: Possibly. We feel pretty passionate. I apologize if they were too aggressive.

COUNCILMAN NUTTER: That's already, it's a part of the job.

One quick question. I'm trying to track down a piece of information about Friday's out at the airport. Are you familiar with that?

MR. SIMPSON: Yes. That's one of my restaurants.

COUNCILMAN NUTTER: Okay. Can you tell me if you have some special policy, or is there a proposed special policy with regard to Friday's out at the airport specifically on the smoking issue?

MR. SIMPSON: We are one of maybe four establishments in the airport that we're allowed to have smoking. That's the Airport Authority's

decision. We have a bar area that is a smoking area -- maybe four tables. The rest of the bar is very tiny, a 3500 square foot space, which is nonsmoking. There are three other establishments that are similar bar-restaurants that allow smoking.

COUNCILMAN NUTTER: The issue I was trying to get at -- there was some information floating around about an issue regarding a surcharge in the smoking area. Do you know anything about that?

MR. SIMPSON: That we would put a surcharge?

COUNCILMAN NUTTER: Yeah.

MR. SIMPSON: No, absolutely not. We have to do street pricing, that's --

COUNCILMAN NUTTER: All right, I understand. It could be a bad piece of information. You were here, I thought I should ask you.

MR. SIMPSON: No, I'm from TGI Friday's.

COUNCILMAN NUTTER: Thank you.

COUNCILWOMAN TASCO: Thank you very

much.

I'd like to place into the record testimony by Copa, Too Restaurant, 263 South 15th Street. And the Bards Irish Restaurant Bar and Craft Shop at 2011-13 Walnut Street. Their testimony will go into the record.

Thank you very much.

Okay, thank you. Appreciate your coming and waiting and your patience. And we'd like to call up -- okay, we're going to call up the next group, but in the meantime, while they're coming, the Councilman's going to move in his amendments.

COUNCILMAN NUTTER: Thanks.

COUNCILWOMAN TASCO: We'd like for Councilman Nutter to put his amendments on the table at this point. I have a prior commitment and I have to leave, and he will have to conduct the meeting, so I have to see that the amendments are put into the bill before I leave.

COUNCILMAN NUTTER: Thank you, Madam.

Madam Chair, again, let me state for the record, these are amendments that have been drafted to either deal with some either

inconsistencies or problems that I've picked up with regard to the legislation, as initially introduced; or they are in response to issues that have been raised by people primarily in the hotel, restaurant, bar community.

I would ask my colleagues to support the adoption of these amendments for the sole purpose of getting the bill in a more appropriate form. I respect my colleagues' right to take any other action that they may take with regard to the bill, which, at some other point in time, may be moved out of committee.

But the primary purpose of these amendments is to correct some errors and also put the bill in a position that the future discussions about it will not be filled with clarification or need to explain what something is because, eventually, the particular element was going to be taken out.

With that in mind, Madam Chair, I'd like. . .

COUNCILWOMAN TASCO: For the purpose of moving the amendments, we have to go into a public meeting and then we'll go back to a public

hearing.

The Chair recognizes Councilman Nutter.

COUNCILMAN NUTTER: Thank you, Madam Chair. In this public meeting, I would propose to offer the following amendments.

Amend the bill on Page 4, Section 10-602(1) by amending the definition of a "Bar" to read as follows:

(a) "Bar." An establishment, the principal business of which is the sale of alcoholic beverages for consumption on the premises. For purposes of this definition, if the sale of alcoholic beverages comprises 60 percent or more of an establishment's gross sale on an annual basis (or such other [basis] factors or criteria as the Department of Licenses and Inspections shall by regulation provide with respect to new or existing establishments that have been licensed to sell alcoholic beverages for less than one full year), then the sale of alcoholic beverages shall be considered the establishment's principal business. The bar area of a restaurant shall be considered as part of the same establishment as restaurant, [whether or not]

unless the bar is in a room separate from the restaurant in accordance with the provisions of Section 10-602(2)(b)(.6), so that the total gross sales of both the restaurant and the bar area of the restaurant shall be considered together for the purposes of this definition. The total gross sales of a smoking area or lounge shall only include sales for such items consumed by patrons in the smoking area or lounge and shall be calculated and accounted for separately from any other bar or restaurant on the premises.

The second amendment: Amend the Bill, Page 8, Section 10-602(2)(a), by amending provision (.2) relating to public transportation vehicles to read as follows:

(.2) In any vehicle of public transportation or in any fare-paid area of commuter rail or other transit stations or terminals owned, operated, or controlled by the Southeastern Pennsylvania Transportation Authority except in an indoor area within such stations or terminals where such conduct may be specifically designated by the Authority to be permitted.

Third amendment. Amend the Bill, Page

8, Section 10-602(2)(a) by deleting provision (.3) relating to sidewalk cafes. That will result in the deletion of: [(3.) In any sidewalk cafe licensed under Section 9-208 or otherwise permitted by special ordinance.]

Amendment No. 4 amendment. Amend the Bill, Page 9, Section 10-602(2)(a) by striking out the words twenty feet in paragraph (.8) and amending it to read as follows:

(.8) Within [twenty (20)] ten (10) feet of any entrance to any enclosed area in which smoking is prohibited under this section, except for any sidewalk cafe licensed under Section 9-208 or otherwise permitted by special ordinance, or any outdoor deck, patio, or similar outdoor service area which is part of a restaurant establishment.

Amendment No. 5. Amend the Bill, Page 10, Section 10-602(2)(b) by inserting additional exceptions to read as follows:

(.6) Within a room in a restaurant hotel or motel which is designated by a person in control of the premises as a smoking area or lounge, provided that there is at least one other

room available to the general public in the restaurant, hotel or motel of equal or greater seating area and accommodations in which food, beverages or both may be served and in which no smoking is permitted, and further provided that all of the following conditions are met:

(i) The smoking area or lounge shall be specially designed in a manner or shall provide features which prevent smoke from escaping to other areas of the building;

(ii) Air from the smoking area or lounge shall be directly exhausted to the outside of the building and shall not be re-circulated to other parts of building;

(iii) The area exhausted from the smoking area or lounge shall be in excess of the air supplied to the smoking area or lounge, and the ventilation system shall provide the smoking area or lounge with no less than sixty (60) 60 cubic feet per minute (CFM) of supply air per smoker; and

(iv) The smoking area or lounge shall be fully enclosed from floor to ceiling and separated from other rooms in areas in the

restaurant, hotel or motel by a door or separate entrance and the general public shall not be required to walk through the smoking area or lounge to access other areas within the restaurant, hotel or motel;

(v) The designated smoking area or lounge shall have signage which clearly indicates that the room is specifically designated for smoking.

(.7) In any sidewalk cafe licensed under Section 9-208 or otherwise permitted by special ordinance, or any outdoor deck, patio or similar outdoor service area which is part of the same restaurant establishment.

Madam Chair, just for clarification, the last amendment, number 5, which are point number 6 and point number 7, they are in the exception area of the bill. That is the area of the bill that allows for smoking in certain areas.

Lastly, Madam Chair, because of the deletion from amendment number 3, which is .3, there is a need to re-number. On Page 8, point number 4 becomes point 3, point number 5 becomes point 4, point number 6 becomes point 5, point

number 7 becomes point 6, and point number 8 becomes point 7.

I believe that's it. Those are all the amendment at this time, Madam Chair, and I would move the adoption of these amendments.

(Duly seconded.)

COUNCILWOMAN TASCO: It's been moved and seconded to adopt these amendments.

All in favor will say aye.

Any opposition?

No opposition, so the motion is carried.

COUNCILMAN NUTTER: Thank you.

COUNCILWOMAN TASCO: We will now return to the public hearing.

For those of you trying to figure out what happened, we just introduced amendments by Councilman Nutter. The amendments -- the bill will be reprinted with these amendments. You will still have an opportunity to -- you'll have an opportunity to discuss the new bill. That will be the bill that's on the table for discussion with the amendments. And anyone can offer additional amendments when we come back for -- when we return

for additional hearings.

So if we work out anything, whatever we work out through this committee process, then the bill may be further amended. So it's still an ongoing discussion, a work in progress, and nothing is settled at this point. Clear?

We are now going to call on Kristine Housenkraft, Karen Kennedy, Beverly McIntosh, Yvonne Campbell, Sue Ryan, and William Dunn.

I'd like to state that I will be leaving as chair, and Councilman Nutter will conduct.

Come on up Ashley.

(Witnesses come forward.)

MS. ANDRUS: Thank you, Madam Chair. My name's Ashley Andrus and I'm Director of Public Police for the Greater Philadelphia Chamber of Commerce. I appreciate the opportunity to testify this evening. And good evening to the members of the committee.

I'm going to be brief. I have previously submitted testimony in full for the record, which you can review. I just wanted to hit on a couple of high points.

First of all, some of my -- some of the Chamber's concerns were addressed by the amendments that were read into the record, which, you know, we're pleased with, but I still want to add a couple concerns that we have.

Just -- primarily, just a philosophical disagreement with this sort of activity on the part of the government to intrude on a business or a consumer to make choices and, in essence, make choices for them. Pretty much the hallmark of our free market economy in the United States is for the ability to make those choices on our own, and we do have serious how much the City's going to mandate versus allowing businesses and their consumers to make choices.

Secondly, we have a concern about what this type of legislation -- what kind of impact it would have on the City's reputation in a couple of ways. One is as a place to do business. We don't think that in and of itself, this ordinance is going to deter business from locating in Philadelphia, but we just have to be cautious in an ever-increasingly competitive marketplace nationally and internationally, about what sort of

reputation Philadelphia has. And with each increasing mandate that's placed on business, we have serious concerns about what that does in terms of our ability to attract companies, which means jobs for our residents and your constituents.

And, secondly, we have a concern about the impact of this on the City's reputation as a hospitality and tourist destination. It's been raised plenty of times before today, and all the efforts that have been done pretty much this decade and evolved on the part of -- we to make sure that we are inviting to our visitors.

And, by the way, a number of those visitors come from international places, and we've spoken before about the cultural differences and the acceptability of smoking in Europe and Asian versus the United States. And I think we have a lot of potential in this city to attract people, but we need to be cautious of the kinds of restrictions that we place on them.

So that pretty much sums up our concerns, and we would very much like to continue to be a the table as this dialogue progresses and

make sure that we can, you know, work out some agreements that are amenable for everyone.

Thank you.

COUNCILWOMAN TASCO: Thank you.

I haven't made any personal comments. It's my duty here to sit here as the Chair, but I hope that other countries will take into consideration those of us who travel abroad 'cause we could be international visitors, and they make no accommodations for us in terms of nonsmoking. I went to France and found it very, very uncomfortable because I could not eat in the restaurant because of the smoke. So it's a two-way street, this whole issue of smoking, and we will probably move forward at some point towards the east.

But we're charged to protect health and welfare of our citizens, that's what government is. And we provide the accommodation when private industry does not. So we have -- I've sat here for what, 12 years, and I've heard nothing but doom and gloom from both sides of the table about what's going to happen if we don't do something, and I haven't seen anything come true of the doom

and gloom that has been purported, that if we take one action, doom and gloom will come. And it has not come forth.

So I appreciate your role, the role you have to play as representing your interests, but we don't have any empirical evidence or information to show that we will just fade away.

Thank you.

MS. ANDRUS: Thank you, Madam Chair.

COUNCILWOMAN TASCO: Thank you.

MS. HOUSEKNECHT: Madam Chairwoman, members of the committee, my name is Kirsten Houseknecht, and I must say that this is the most origin misspelling of my name I have yet to see and I've seen plenty of spellings of names, but this one is tops.

COUNCILMAN NUTTER: I'll take the weight from the Chair. That error would be with us.

Would you spell it correctly for us please.

MS. HOUSEKNECHT: It's Kirsten, K-I-R-S-T-E-N, Houseknecht, H-O-U-S-E-K-N-E-C-H-T.

I have a potentially lethal allergy

smoke. It is, oddly enough, as best we've been able to tell, not from tobacco. We do not know yet what it is to.

My allergies started out as an inconvenience, a hardly noticeable problem that simply made heavily smoking environment uncomfortable. Over the years, it has gotten progressively worse to the point that I have had episodes of shock. Any significant exposure to cigarette smoking endangers my life. So, obviously, I have a very strong personal reason to support a ban on smoking in public areas.

That having been said, what may be less obvious is I have many other reasons for supporting that ban, and I'd like to talk to you about that because most people do not share my level of lethal allergies. My husband does not have my allergies; my husband has asthma. My husband believed until recently that cigarette smoke had no impact on his life. Because, of course, he has to share environment with me, we are necessarily usually in a nonsmoking environment.

Recently, as in the last five, six,

seven years, he has changed jobs and is now working in what began as a smoke environment at work and then became a nonsmoking environment at work. His absence due to illness dropped over half. His use of his rescue inhaler dropped well more than half. I can testify to the fact that his rescue inhaler has lasted longer despite his asthma becoming progressively worse. This was directly as a result of his workplace banning smoking inside his building. Prior to this, he did not believe that smoking had any impact on his health. He avoided smoke for my sake.

To return to the aspect of the City of Philadelphia and this ban, we eat out. We eat out regularly, we out for dinner at least once a week, I eat out for lunch almost every day. Because of the dangers of secondhand smoke, there are very few restaurants in the City that I can eat in. I will state that I have had one good fortunate at this meeting of learning of several new smoke-free restaurant to go to.

Smoke routinely drifts into most nonsmoking sections. Because of my allergies, I'm extremely sensitive to it. It only takes once

incident of being unable to breathe to trigger a panic reaction whenever you smell cigarette smoke.

I've heard estimates today ranging from 20,000 to $200,000 to fit a restaurant out with the proper air filtration that will not have cigarette smoke drifting over into the nonsmoking section.

I will state that I have been in restaurants that have smoking only at the bars. I've had to leave these restaurants sometimes in the middle of my meal because of cigarette smoke drifting into the nonsmoking section. I am routinely seated as far away as possible from the smoking section of the bar, and it still does not help.

Banning smoking in all public areas that routinely half to be entered by people like myself would be saving my life. It would also enable me to work in Philadelphia, which I have not been able to do now for some time.

When shopping malls went smoke-free, I remember hearing a number of people proclaiming that the shopping malls would close and people

would go elsewhere. Last time I went out to the local shopping malls, they were doing quite while and got a good deal of my money. At least to me, they looked like they were doing very well.

We don't allow smoking in many public areas already. Extending that ban would make good sense. I know that I have an overriding personal reason to think so. For right now, I routinely drive out of the City to eat. I routinely drive out of the City to shop, and that is because of my smoke allergies and because of my husband's asthma. I would rather not drive an hour to Newtown because that's where the restaurant that I love to eat in is and went smoke-free. I would rather not drive to New Jersey to eat, which I do now. I've heard a number of people say, They'll drive to New Jersey. Well, there's smoke-free restaurants over there already, I drive there now. They're not all smoke-free work over there, but hey, if we start here, we could work over there.

I also heard a comment earlier that I must respond to, which is that fettuccine is a heart attack on a plate. That may be, but your eating does not put weight on my hips no matter

what I think. I know I've been claiming that I could look at a chocolate bar and gain weight, but nonetheless on somebody else, eating the food does not necessitate me eating it, while somebody else in a room smoking necessities my breathing it. And that makes a very big difference.

I've heard a lot of restaurateurs sound like they're very accommodating to nonsmoking. Unfortunately, I do not meet them when I go out. I sit in nonsmoking areas, someone lights up or smokes starts pouring from the bar area, and I ask if something can be done about it, and the answer is routinely "go eat somewhere else."

I'd rather spend my money in Philly. I live in Port Richmond, I grew up in Chestnut Hill. I've lived here since I was two years old. I routinely travel to other cities as part of my business. I can say with some certainty that the areas that I've been to that do have smoking bans, including Boston, have become much more comfortable for me. And it has always been with a degree of regret that I come back to the City of Philadelphia and find that I have to demand my rights to breathe clean air.

I certainly do not want to endanger business, I don't want to cause problems for restaurant owners, but I do think that smoking falls into a rather unique category, in that somebody else doing that impacts on me. It impacts on my husband, it impacts on my friends, and that's a big difference from somebody else drinking. Drinking alcohol is legal in this country and smoking is legal, but we legislate your ability to drink and drive a car, because that endangers other people.

It's quite legal for me to go home and have a wild, passionate night with my husband, but I think they would object if did it in a restaurant.

We legislate behavior that is legal in this city. We have and we always will. We legislate where you can do it and where you cannot do it. Smoking is legal. I have friends that smoke, my mother smokes, but we can legislate where people are not permitted to smoke for the public health.

Restaurants undoubtedly protested some of the oversight by L&I and some of the oversight

by other regulation agencies that dictate health of our food. When that was first established, I'm sure most of them said it wasn't necessary, and for most of them, but we still legislate that because it impacts on the public health.

Smoking is legal. As long as it is legal, that's not my concern. What my concern is, if somebody else's smoking is forcing me to participate in their smoking, forcing me to lose my choice.

I must say I was somewhat conflicted to speak on behalf of this passing this bill since I am routinely one of the most anti-government regulation and pro-choice, pro-free speech, you name it, I'm usually against any kind of government regulation. But just as we acknowledge that the City has a right to regulate the cooking conditions in a restaurant, because that impacts on public health, as more and more evidence accumulates that secondary smoke is a danger, we must regulate where that impacts upon people who do not choose to smoke.

Thank you.

COUNCILMAN NUTTER: Thank you. Thank

you very much for your testimony.

Yes, sir. Please identify yourself for the record.

MR. DUNN: Good evening. My name is William Dune, and I'm from East Greenville, Pennsylvania. It's outside of a little town called Philadelphia.

COUNCILMAN NUTTER: Thank you.

MR. DUNN: The small town that I live in, we have a total of three restaurants, which all three allow smoking. My favorite is the diner. I eat there quite often because they have good food. But if you look up to the ceilings, they're all yellow and it's not the food; it's the smoking. I am a regular in a restaurant and the people that come there know, and they usually don't sit near me when I'm sitting there eating, or they don't smoke.

But I spent many, many weekends in Philadelphia in the bars. And 1986, at the ripe old age of 40, I had to get a laryngectomy. I was smoking three packs of cigarettes a day. Since then, I have worked with those who have undergone laryngectomies. One of the things that I do is I

visit them, and not too long ago, I was requested to visit a laryngectomy in Reading. She had been a waitress for most of her life. When she started as a waitress, she did not smoke, but she eventually started. When she got throat cancer, she could no longer serve the public because she was an embarrassment to the restaurant, who had no health insurance, so they fired her. I wanted to ask the restaurant owners today how many of them provide insurance for their employees that get sick from being affected by secondhand smoke. A couple of years ago, I was requested to visit a laryngectomy here in Philadelphia who had been a bartender for many years in a bar. When he started at the bar, he didn't smoke. He eventually became a smoker and a drinker. And today he has a laryngectomy.

I have a sister -- I come from a family of nine children. I have a sister that has lung cancer. She didn't have a choice. Many, many times, I changed her diaper with a cigarette hanging out of my mouth, as did some of the other family members. Out of nine children, she was the only one who didn't smoke. They're positive it

was from secondhand smoke.

I go into many restaurants and I see children sitting in the booth or the tables with the parents and the parents are puffing away. The child has no choice.

This ordinance, if passed, would help protect the nonsmokers who have no choice. I think that it needs to be passed. I think the for the restaurant owners, quite possibly, the savings in health insurance alone would be astronomical just by eliminating smoking. I mean, I go to the hospital down here and you have to walk through the smokers to go into the hospital. It is necessary to make away from the doors.

So I do hope that you will consider and pass that bill to save the future of this city. Thank you.

COUNCILMAN NUTTER: Thank you very much for your testimony.

At this stage, if there is anyone else to testify, could you all come up to the witness stand and identify yourselves for the record. I want to thank everyone who is still here. We I greatly appreciate your perseverance and your

commitment to this particular issue. Sorry that it took so long, but there are a lot of people who had a lot to say, and we wanted to make sure that everyone had the opportunity, so thank you again.

Please proceed.

DR. EMMETT: My name is Edward Emmett, and I'm a physician specializing in occupational environmental medicine and am the director of the academic programs in occupational medicine at the University of Pennsylvania, and I really want to make just three points.

The first is about individuals who are susceptible to smoke, and we've heard some testimony from some of those people today. And people get sinusitis, headaches, asthma, and other conditions from smoking. The question has always been, how common is that? and recently. That's been answered in a survey in California, and the question that was asked was, do you get sick sitting in a room where someone is smoking? and they're able to answer: it's no problem, it bothers me, it makes me sick, or it makes me very sick. And with secondhand smoke, 7.6 percent of the population actually say that smoking makes

them very sick, and 18 percent of asthmatics say that smoking makes them very sick. So this is -- this sensitivity to smoke is quite a prevalent thing in the community, and in those people who are sensitive, we don't know any safe level of exposure to protect those individuals.

The second point I wanted to make is the significant levels of smoke that affect people who work. Recent surveys have shown that 88 percent of all Americans are exposed to cigarette smoke at work. And the highest exposures occur in restaurants and bars, and there's been a lot of information on the amount of smoke people are exposed to.

People who work in offices have levels of smoke that are broadly the same as those of someone smoking in your office. People who work in restaurants have about one and a half times the smoking level on the average -- and, of course, this depends a lot on the design and the ventilation of the restaurant -- one and a half times on the average the levels that are in houses. And people who work in bars have levels that are about four and a half times those in

homes. So the levels are much higher in people who work in bars.

There have also recently been a number of studies -- and none in Pennsylvania but in a number of other states like Illinois, New Jersey, Missouri, California -- of lung cancer levels in people who work as bartenders and in the food service industry. And it appears there's about a 50 percent increase, a 50 percent increase, in the amount of lung cancer in people who work as bartenders and food service workers, after you take away the amount that's produced by their own smoking. So that's the amount of cancer due to secondhand smoke.

Now, unfortunately, of course, these are the jobs that are on the increase in our city and in cities like Philadelphia, and these are the types of jobs that young people are often exposed to. So people are exposed for quite long periods of time and at ages when they're quite vulnerable.

The third thing I want to mention briefly is the effectiveness of bans on smoking in the workplace, and this has been studied very carefully in hospitals, where people had a smoking

ban, comparing them with hospitals where there was no smoking ban. And it's been shown that it's much easier to quit smoking -- a higher percentage of people quit smoking if they're working where there's a nonsmoking ban. That's true in the first year of work and it's true if you follow those people longitudinally. If you follow them for five years, there's still a much higher quit rate if people are working where there's a smoking ban.

I haven't seen figures of the smoking rate in employees and restaurants and in the bar industry in Philadelphia, but there was testimony here today from the industry saying there are very high rates of smoking amongst people who work in restaurants and bars. And I would say that one of the things that from the evidence in the studies that have been done, one of the things that will help those people is if there is a ban on smoking in those workplaces.

There's also.

COUNCILMAN RIZZO: Doctor?

DR. EMMETT: Yes.

COUNCILMAN RIZZO: Could I just stop

you for a second and ask you a quick question?

DR. EMMETT: Sure.

COUNCILMAN RIZZO: You said something that was just interesting a few minutes ago. Let me describe a situation. You're in a restaurant with a nonsmoking session. Mom and dad want to take their infant, a few months old, out on a Sunday afternoon, obviously something you would discourage, taking an infant into a restaurant that has smoking even in the nonsmoking area. Is that --

DR. EMMETT: Yes, that's true.

COUNCILMAN RIZZO: That's true?

DR. EMMETT: Well, I think that why that's true -- I guess that's a slightly different point. It has been shown that nonsmoking bans are more effective if the nonsmoking ban affects the whole area. Nonsmoking bans don't work as effectively if, in fact, you ban it from part of the area and not another part. So I guess that's the comment I would make there.

COUNCILMAN RIZZO: Okay. I just wanted to make sure I understood. Excuse me for interrupting you.

DR. EMMETT: No, no, I'm pleased to answer any questions. And, in fact, I think I'll end my testimony there. And if there's any other questions, I'd be happy to answer them too.

COUNCILMAN RIZZO: Thank you.

The next witness. Could you identify yourself for the record, please.

MS. MAGALDO: Yes. For the record, my name is Mary Magaldo, M-A-G-A-L-D-O. I appear before you in the capacity of a private citizen of the City of Philadelphia. I want to thank Councilman Rizzo and other members of the Council for the unique privilege of appearing before you as a citizen.

It has been my belief that as a citizen, we not only have rights, but we have great responsibilities, and one of those great responsibilities is to speak out on the issues that affect the area in the City in which we live. And I want to thank the Council for giving me that opportunity.

I am a lifelong resident of Philadelphia. I was born here in a Philadelphia, in Frankford hospital, and I am a nonsmoker. I

have been all my life because I made that choice to be. But I am also speaking in opposition to this bill simply because I believe the issue of choice is at stake living. We are living in a society where government impedes more and more on the private sector and opens the doors of private life more and more to public scrutiny. This is a dangerous trend that I believe must be stopped. And I believe this bill is a primary example of that trend.

I believe the government is not in the business and has not been instituted by our forefathers for the business of interfering in social habits. Government is in the business of governing, not in the habit of going into our private lives. And I believe that experiments in controlling social behavior, such as the one we endured in the '20s and '30s in the matter of prohibition in which we banned drinking in this country, was a total failure. The only people who benefitted from prohibition Al Capone and his cohorts in the City of Chicago. Everybody else, you know, had no benefit at all.

Secondly, I believe that businesses who

bear their fair share of the tax burden in this city, which has escalated in the last few years, they know their clientele, they know the restaurant business better than we do. They are in a better position to be able to gauge the marketplace and design and tailor their businesses in answer to those needs and questions.

I have never owned a restaurant or operated a restaurant, but I had the privilege of working at Dunkin' Donuts for three years, and I can tell you, as a waitress in that establishment, that when my business went nonsmoking, I lost my job, and the reason I lost my job was because people stopped coming. They like to have a cigarette with their coffee, they like to have a cigarette with their donut or whatever. We took that away from them and business dropped.

It used to be a time, when I worked in Dunkin' Donuts that both counters were filled; you couldn't get to the people fast enough. The line on Sunday was out the door and around the corner. When Dunkin' Donuts decided to ban smoking in their public facility, business dropped. One counter was sufficient to fill the needs for a

shift. Girls lost their jobs. Prior to losing jobs, our tip base began to disappear.

Waitresses and waiters rely very much so on tips because they are not subject to minimum-wage requirements. And, therefore, people who smoke, who go to bars, drink, have a cup of coffee, it has been proven in my experience that they stay around longer for that second and third cup of coffee, so they spend more and they tip more. When you take that away from them, you shrink the tip base of the service customers.

The third question is also, I find it absolutely incredible that in a city where people are leaving here in droves, the tax base is eroding and we are hemorrhaging at the seams, that the City Council is going to pass a bill that will further restrict business people in this city.

Fourthly, I think a recent study by the Lung Association -- the American Lung Association, which was published in SEPTA's Metro Paper on Page 6Aon today's issue, states that the air quality in Philadelphia did not pass inspection. That is not because of cigarette smoke; it is because of the carcinogens and the pollutants that

are poured into the air by SEPTA buses, by cars, by factories. I find it incredible that McDonald's is nonsmoking and they post signs saying, We're doing this for your health, this is why we don't want smoking in McDonald's, and they're serving fatty hamburgers and spilling carcinogens into the air.

I think we have to stop and look at the hypocrisy. We're worrying about eliminating smoking in bars, but we don't look at the effects of alcohol. People who are proponents of this bill say the reason they want it is because of what impact it does on other people. But drinking also has an impact on other people. I'm a sister of an alcoholic, so I can tell you what an impact drinking has on families and friends of alcoholics.

So if you're going to pass a bill in which you want to protect people from social vices, then I suggest you start compiling a long list, because there's quite a few of them.

COUNCILMAN RIZZO: We appreciate you coming here today.

MS. MAGALDO: So that's -- I want to

thank you for letting me take the time to address you, and I just hope that the Council can work together with the restaurateurs in a spirit of accommodation. And I thank you for allowing me the time.

COUNCILMAN RIZZO: Thank you.

MS. TRACY: I'm just going to in here. I'm actually not really going to talk. I just wanted to hand up this survey -- well, I am going to talk, but very briefly.

COUNCILMAN RIZZO: Identify yourself for the record.

MS. TRACY: My name is Mary Tracy, and I work for the Health Promotion Council, and I'm part of the Tobacco Free Action Coalition for Health, and I'm very interested. And I really want to thank you, Councilman Rizzo, for hanging out here all afternoon and, of course, Councilman Nutter for introducing this and all of the Councilmembers on this committee who are taking this serious issue seriously, and I can see very sincerely trying to find way through it all. And I know it's difficult. I know it's highly controversial.

COUNCILMAN RIZZO: And you can be confident that those meetings that we're going to have in reference to this will not be in should smoke-filled rooms.

MS. TRACY: Well, I think that's one of the advantages. In fact, that's what the survey really says, is that -- we found that 77 percent of the workplaces here in Center City -- that was 177 out of 231 -- actually were smoke-free. And we found that pretty astounding that so many places already are smoke-free but that the 55 workplaces that weren't, 85 percent of them were connected to the hotel or restaurant, and it seems like really a double standard here in our city, that there is a group of workers that are very unfairly treated.

And we heard a lot about accommodating everyone, and the restaurant owners being, you know, hosts and wanting everybody to be happy, but I don't think they really fair shrift to the people who work for them. And I think that that's where the government really does need to step in, regardless -- you know, despite what this person was just testifying about. There is a time when

our government needs to come in. Based on these facts, we need to take action.

And I just would like to close -- you know, you can sort of just read through, it's very brief testimony. I did meet -- in the course of this, I just have to share one guy, and I was going to bring him with me today. His name was Riyad Marahra, and he has Riyad's Restaurant, right across on Arch Street, right across from City Hall. His wife was pregnant, she worked in the restaurant, he worked there, and another -- it looked like a cousin or something. And when I went in to say, Are you smoke-free? they said, Oh, no, we'd love to be. If only everyone, he said to me, would go smoke-free, then it wouldn't hurt any of us. Could the government pass a law? Now, I wish he could have come today because he really said this to me. I wouldn't make this up, believe me -- where is that Bible? And I think we have to think of people like that.

And there was another young woman who I interviewed in the course of this who was a hostess. And she's a beautiful young girl, and I said, Well, is this smoke-free? and she rolled her

eyes and said no. I said, Well, where do the smokers sit? and she said, Oh, I try to put them way back in the corner 'cause she didn't want to have to breathe that air.

So, you know, there are a lot of people who work in this industry that know they're breathing poison, but that's their livelihood, and they are looking to the government to protect them from this.

So, you know, as you're making your final decision and getting the pressure from the industry, getting the pressure from the Chamber, who, by the way, I ended up calling, I think, about 94 of them, and all but one of them work in smoke-free environments, so it's hard, really, for the Chamber, I think, to take a position that the restaurants -- they're not here now but, I mean, to say that this one industry and all these workers should work in an environment that they themselves don't work in, I mean, I think that's fairly hypocritical.

So, you know, but I think basically I just want to end with the thought after 75 years -- over 75 years and billions of dollars, the

tobacco industry has successfully turned America and the rest of the world into a smoking culture. And what we're trying to do now is to turn that culture around.

And the CDC, Center for Disease Control, has said that the most effective thing that you can do is to pass legislation that restricts smoking in public places. That's really why we're all here. It's not about not wanting to breathe smoke in a restaurant. I mean, I can cook at home.

COUNCILMAN RIZZO: I could bet, and I haven't heard anyone really say it, but if I owned a restaurant, I could bet that it would be a lot easier to maintain the carpeting, the tables, the curtains.

MS. TRACY: Oh, yeah.

COUNCILMAN RIZZO: Because I can imagine that clientele that smokes makes it a tough maintenance project to keep up on.

And also, just out of sheer coincidence, I asked someone about businesses and many fires that start. A lot of them have started because cigarette ashtrays have been tossed in the

trash cabs and the help doesn't put out the trash in a proper way like in a butt kit.

MS. TRACY: Right.

COUNCILMAN RIZZO: And hours later, a fire develops. So there are a lot of other things also besides health that --

MS. TRACY: A huge amount. In fact, in the back of my testimony, I included just a quick fax sheet on how smoking bans will not hurt business, and the very thing that you indicated, Councilman, they say that 60 percent of the people surveyed said that they had -- that they saved money on cleaning costs and repairing rugs. Actually, I'm a musician and I go out sometimes to places and play, and I have that I have to come home and take a shower because, you know, when you're trying to -- I play the violin.

COUNCILMAN RIZZO: Will you come play for us?

MS. TRACY: Will you vote for this bill? I'll play right up there in the corner, you know --

COUNCILMAN RIZZO: It would have to be a different tune.

MS. TRACY: Actually, I play Irish music, so I have lots of good Irish jigs and things.

But I mean -- and I've seen people right in front of me, you know, put out their cigarette right on the carpet. So you're absolutely right about that.

So there are some good stats in there. And everyone's not here, but I would really implore you all to have the courage to go forward with this.

COUNCILMAN RIZZO: Are you aware that there's a hotel in Center City that --

MS. TRACY: The Rittenhouse.

COUNCILMAN RIZZO: No.

MS. TRACY: The Sheraton?

COUNCILMAN RIZZO: The new hotel right around the corner from the Commerce Bank on -- it's totally, the whole place, it's smoke-free.

MS. TRACY: Yeah, that's the Rittenhouse Sheraton. The general manager was here today testifying.

COUNCILMAN RIZZO: No, it's not the Rittenhouse, is it?

MS. TRACY: Isn't it called the Rittenhouse Sheraton?

COUNCILMAN RIZZO: Yeah, yeah, the Sheraton Rittenhouse, that's it.

COUNCILMAN RIZZO: As a matter of fact, that entire building is environmentally-friendly. The carpets have -- there are special carpets, they use special paint.

MS. TRACY: And their business is booming. I mean, he was here to tell about that today but I think he sort of got --

COUNCILMAN RIZZO: I must have out of the building at that moment.

MS. TRACY: He got shuffled, you know, with a bunch of other people but, yeah, he was here and is very supportive of what we're trying to do and trying to say that they are successful.

COUNCILMAN RIZZO: Thank you, Mary.

MS. TRACY: Okay. Thank you, Councilman, and thanks again for --

COUNCILMAN RIZZO: I like your tune.

Would you identify yourself for the, record.

MR. OLIVETTI: My name is Robert

Olivetti, O-L-I-V-E-T-T-I, and I'm speaking as a private citizen.

I wanted to mainly focus my attention on the restaurant issue. Even though I'm in favor speaking out in favor of the bill and I'm in favor of the smoking provisions for the workplace limit to the restaurant issue, I will mainly limit my speaking to the restaurant issue.

I will mention that as far as the hotel -- the hotel issue, I have stayed at hotels in the City many times, even though I live in the City, and I normally have been able to get a nonsmoking room, but that may be due to the fact that I arrive early because I live in the City. I'm not sure how I would make out if I arrived later.

I will also mention that this issue has particular meaning to me my daughter was born with a birth defect and had one of her lungs removed at five weeks old, and so she has always been under doctor's instructions to avoid smoking areas as much as possible. She's now 15 years old, but we still try to avoid smoking areas, and I did even before she was born.

My experience with the restaurants in the city -- a lot of restaurants spoke today, but my general experience over the years is that it's a game of chance with them. There are very few that are completely smoke-free. I think I saw a list published in a Center City newspaper recently of smoke-free restaurants by an organization, and almost all of them were fast-food chains, except for Chestnut Hill, with the exception of Chestnut Hill.

There are very few places in Center City, like I said, that are smoke-free, and what I have experienced is that you end up in a smoke-filled lobby while you're waiting for your table. I've had cases over the years where I've been told that there was a nonsmoking section, only to be seated there and have somebody light up and then question it and be asked, Well, would you like to move to a different section? And I said, Well, I thought that I was in the nonsmoking section, that's what I asked for, and they say, Well, there's a section over there where nobody's smoking, and I said, Well, that's not the issue. The point is that I was told that I was in the

nonsmoking section.

I've also had a situation with a restaurant in the Northeast where I asked for the nonsmoking section with my family, and we were seated in it, and it was a nonsmoking section, and I checked it out and made sure there were no ashtrays on the tables in that area, and later on, a large group of about 10 or 12 people arrived, and they put some tables together, and they seemed like they knew the waiters, maybe because they were frequent customers or maybe because they just knew them. But one of fellows said, Could we get a couple ashtrays? and they promptly went and got a couple ashtrays and put them on the table.

And there I was, having already ordered my food, with the choice of either complaining -- and I don't like to complain at restaurants once I've ordered my food, while they're still handling my food, or walk out, which would spoil the day for my family, or just, you know, finish eating and complain later. So that's what I decided to do, but I didn't enjoy that day at all, even though I was spending good money.

And I left and I called the next day

and talked to the manager and complained, and they apologized, but an apology doesn't do you much good when the evening has already been ruined.

I've also found that in a lot of restaurants that they do have nonsmoking areas, but you don't know what you're going to get until you get there. And so I try a lot to scout out a restaurant before I go there by calling them and trying to get some information but, like I said, it's a crap shoot, it doesn't really work. You know, they say, Yes, we have a nonsmoking section and you get there -- yes, excuse me.

COUNCILMAN RIZZO: I'm just agreeing with you. As a matter of fact, today, I made a comment, which -- whenever I go to -- let's say I'm making dinner reservations for friends, we're going to meet for dinner. When I make the reservation, just because I don't know if someone smokes, 'cause I didn't ask them, you know, if it's a person that I'm not familiar with, I'll just automatically err on the side of asking for nonsmoking, because I don't know if any of them smoke, and I've been in the company of some folks that when I said that we were sitting in the

nonsmoking section, right away, they moaned and groaned and said, Geez, you know, we smoke, and I say, Well, you're just going to have to give it up for a couple hours here until we finish.

But, you know, that's just a follow-up on what you said.

MR. OLIVETTI: Right, yeah. What I've found is a lot of times is, like, there's a bar there in the restaurant, and they'll say, Well, you are seated in nonsmoking. And if I complain, I'll say, Well, I'm like 20 feet from the smoke and it's coming right over here and there's like 10 people smoking, a whole row of tables, and they say, Well, we're sorry, you are in the nonsmoking section. That's what you don't know, and we don't get schematics of the restaurant when we decide to go.

And even though I've been a resident of the City, as I mentioned earlier, we actually vacation in Philadelphia, we actually take weekend vacations. I've spent 20 nights in Philadelphia hotels, and we try do it as a tourist and we try to go to nice restaurants and I try check out new places, but I can't. Because, like I said, it's a

game of chance. So you end up going to the same places or we end up eating at Au Bon Pain at lunch instead of a restaurant because I know at least it's smoke-free.

COUNCILMAN RIZZO: So what you're saying is, basically, even though a restaurant claims they have a nonsmoking section, they shrink it and expand it based on need, and that if they have 10 come in, they'll encroach into the nonsmoking area, even though what you thought you would be in what was a larger nonsmoking area.

MR. OLIVETTI: Yeah. And I can't even tell if they're expanding it or not because it's not separated by any partition or whatever, so you don't really know how it exists.

COUNCILMAN RIZZO: No redlining around it, right?

MR. OLIVETTI: But I ate dinner at the Franklin Plaza in their Terrace Restaurant, and I sat in the so-called nonsmoking section, and it was the nonsmoking section at the very front of the restaurant, and the lobby runs right alongside the restaurant, so they have couches there, and then the lobby, of course, allows smoking, so

there I was, sitting in the nonsmoking section, nobody around me was smoking, but somebody within two feet of me, sitting on a couch, was smoking and the smoke was blowing right up in my face, and this is what you run into when you try to avoid smoke, even though the restaurant industry would let you think that they're accommodating everyone.

The -- so basically my point is, I know there's talk of compromise on the bill, and I know that's probably inevitable. To me, I don't have any objection to separate rooms, even though I like the bill it was written originally, but I don't have an objection to separate rooms, but I think the issue of bars, if you decide to allow smoking in bars, I really think that there has to be some kind of a partition or something that really keeps the smoke out. Otherwise, I'm going to be back in the same boat where I am now. And I know, you know, people are not going to want to separate the bar. I mean, you can do a new nice job with wrought iron and glass and something to not make it look like it's separate and not make it a separate room, but to really separate, you know, the smoke from the nonsmoking sessions. And

I would prefer to see a separate ventilation system if that's feasible.

I had some other comments I wanted to make about -- refuting some items in the Inquirer and Daily News editorials, which I thought were sarcastic, to say the least, but I'll go past that and try to speed this up. I was going to read a piece of a letter that I thought was particularly good in the Inquirer, but I will also go past that and try and wrap this up, because I have to get last train to the Northeast.

So in a nutshell, basically, I think it's an issue of health versus convenience. And to me, health always supersedes convenience.

The -- I think the restaurants in the City are excellent. I would like to try more of them. And I think their fear reminds me of Chicken Little with "the sky is falling." You know, they're all afraid but if the law goes through, they'll all do fine.

Just to conclude, I want to thank you, Councilman Nutter, for taking the lead on this issue. I've been waiting for this for a long time. I want to thank the other sponsors of the

bill and hope that they'll stick with the bill as it comes under intense pressure. And I want to thank anyone else who joins in to support it.

I just want to urge Council pass the bill as close as possible to the way it is, and to especially avoid that situation where the bar is next to the restaurant. I think that, you know, we need to join the list of other progressive cities that have taken the lead in protecting the health of their citizens.

I thank you very much. And it has been a long day. I took vacation time just to come here, and I didn't know I needed to take vacation time to come here.

COUNCILMAN NUTTER: Right, right.

MR. OLIVETTI: But I appreciate the opportunity to testify. Thank you.

COUNCILMAN NUTTER: Thank you very much. Thank you.

I need to add some letters of testimony that have been shared or left with us and add it to the record as if it had been read. We have testimony of:

Rachael Milenbach, from the Tobacco

Control and Prevention Program from the Health Promotion Council of Southeastern Pennsylvania;

Testimony of Mr. Jeffrey Barg, Chairman, Tobacco-Free Education and Action Coalition for Health, also known as TEACH;

The testimony of Dr. Clarke Piatt, from Temple University Division of Pulmonary Critical Care and Sleep Medicine;

The testimony of Mr. Michael Smith, on behalf of the American Lung Association of Pennsylvania;

And the testimony of Mr. Joseph Minott, Executive Director of the Clean Air Council.

I do not believe there's any other testimony to be added to the record, and we have worn out the public from trying to testify on this particular bill and we've worn out a few Councilmembers as well.

I have been authorized by the Chair of the committee to recess this hearing until Wednesday, May 31st, at 3 o'clock p.m. This committee will stand in recess until Wednesday, May 31st, at 3 o'clock p.m., when we will continue testimony as well as discussion about the elements

of Bill 000314. With that, the hearing is adjourned.

(Adjourned at 8:55 p.m.)

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C E R T I F I C A T E

I HEREBY CERTIFY that the foregoing proceedings of the Council of the City of Philadelphia of Wednesday, May 24 2000, were reported fully and accurately by me, and that this is a correct transcript of same.

RE: COMMITTEE ON PUBLIC HEALTH AND HUMAN SERVICES
BILL NO. 000314

_____,

JOSEPHINE CARDILLO,

Registered Professional Reporter