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COUNCIL OF THE CITY OF PHILADELPHIA

3

PUBLIC HEARING

4

COMMITTEE OF THE WHOLE

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Room 400, City Hall
Philadelphia, Pennsylvania
Thursday, March 10, 2005
9:40 a.m.

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9 BILL 050165 - An Ordinance providing for the
submission to the qualified electors of the
10 City of Philadelphia of the amendment to the
Philadelphia Home Rule Charter creating a
11 new Chapter 5...

12 RESOLUTION 050176 - Resolution proposing an
amendment to the Philadelphia Home Rule
13 Charter creating a new Chapter 5...

14 PRESENT:

15 COUNCIL PRESIDENT ANNA C. VERNA, Chair
COUNCILWOMAN JANNIE BLACKWELL
16 COUNCILMAN W. WILSON GOODE, JR.
COUNCILMAN RICHARD T. MARIANO
17 COUNCILMAN DARRELL CLARKE
COUNCILWOMAN DONNA REED MILLER
18 COUNCILMAN MICHAEL A. NUTTER
COUNCILMAN FRANK RIZZO
19 COUNCILMAN FRANK DICICCO
COUNCILMAN JACK KELLY
20 COUNCILMAN JAMES KENNEY
COUNCILWOMAN MARIAN TASCO
21 COUNCILWOMAN BLONDELL REYNOLDS BROWN

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1 03/10/05 - WHOLE - BILL 050165

2 COUNCIL PRESIDENT Verna: Good
3 morning, everyone. This is the public hearing
4 of the Committee of the Whole. I would like
5 the record to reflect that we do have a
6 quorum. Present is Councilmembers Miller,
7 Clarke, Nutter, Rizzo, Mariano, DiCicco,
8 Goode, Blackwell and, of course, myself.

9 I would ask Mr. McPherson to please
10 read the title of Ordinance No. 050165 and
11 Resolution No. 050176.

12 THE CLERK: Bill No. 050165, an
13 ordinance providing for the submission to the
14 qualified electors of the City of Philadelphia
15 of an amendment to the Philadelphia Home Rule
16 Charter creating a new Chapter 5 entitled
17 "Referenda Approved By The Voters" in Article
18 VIII, Provisions of General Application, and
19 creating a new Section 8-500 entitled "Smoking
20 in Public Places and in the Workplace" calling
21 on the Council of the City of Philadelphia to
22 pass no legislation that will prohibit smoking
23 in public places and in the workplace; fixing
24 the date of a special election for such
25 purpose; prescribing the form of ballot

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2 questions to be voted on; and authorizing the
3 appropriate officers to publish notice and to
4 make arrangements for the special election.

5 Resolution No. 050176, proposing an
6 amendment to the Philadelphia Home Rule
7 Charter creating a new Chapter 5 entitled
8 "Referenda Approved By The Voters" in Article
9 VIII, Provisions of General Application, and
10 creating a new Section 8-500 entitled "Smoking
11 in Public Places and in the Workplace" calling
12 on the Council of the City of Philadelphia to
13 pass no legislation that will prohibit smoking
14 in public places and in the workplace.

15 COUNCIL PRESIDENT VERNA: Thank you.

16 I do not have a list of witnesses
17 that would like to testify. Is there anybody
18 in the audience that would like to testify?

19 (No response.)

20 COUNCIL PRESIDENT VERNA: I believe
21 we are just receiving an amendment to the
22 resolution and to the bill. So I would like
23 to give everyone an opportunity to read it.

24 This will conclude our public
25 hearing.

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COUNCIL OF THE CITY OF PHILADELPHIA

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PUBLIC MEETING

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COMMITTEE OF THE WHOLE

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Thursday, March 10, 2004

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Public meeting conducted by the
Committee of the Whole, held in Room 400, City
Hall, Philadelphia, Pennsylvania, on the above
date, to consider action on the following:

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BILL 050165.

12

RESOLUTION 050176.

13

PRESENT:

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COUNCIL PRESIDENT ANNA C. VERNA
COUNCILWOMAN JANNIE BLACKWELL
COUNCILMAN W. WILSON GOODE, JR.
COUNCILMAN RICHARD T. MARIANO
COUNCILMAN DARRELL CLARKE
COUNCILWOMAN DONNA REED MILLER
COUNCILMAN MICHAEL A. NUTTER
COUNCILMAN FRANK RIZZO
COUNCILMAN FRANK DICICCO
COUNCILMAN JACK KELLY

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2 COUNCIL PRESIDENT VERA: We will
3 now go into our public meeting.

4 The Chair recognizes Councilman
5 Mariano for an explanation of the amendment of
6 the Resolution 050176.

7 COUNCILMAN MARIANO: Thank you,
8 Madam President. I circulated a set of
9 amendments to Ordinance No. 050165 and A
10 confidential memo from the City Solicitor. It
11 pretty much explains everything. But in a
12 nutshell, there was concern, and it was
13 legitimate concern from my colleagues the
14 other day concerning the title may basically
15 confuse people and think that if they're
16 voting this amendment to put the smoking ban
17 on the bill, the actual bill, the ordinance
18 and the resolution, that if it does get to
19 that part, if it does get on a ballot in May
20 that City Council -- that we would have to do
21 whatever came out of the actual vote by the
22 public; and that's not the case. It's going a
23 non-binding. That's how I wanted it, to be
24 non-binding. The other day I said I wasn't
25 sure that was my intent. So we asked your

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2 attorney who agreed with us, but the City
3 Solicitor gave us a written opinion saying
4 that it's non-binding, Council still gets to
5 do what it wants on this issue regardless of
6 what electoral says. I think it just gives us
7 a view of what people want to see here. It
8 could go either way. I'll gladly answer any
9 questions.

10 COUNCIL PRESIDENT VERNA: How about
11 the amendment to the ordinance? I believe
12 it's Section 2.

13 COUNCILMAN MARIANO: Section 2,
14 correct, shall be placed on the ballot the
15 following question to be answered yes or no by
16 the qualified electors participating in this
17 election. Shall the Philadelphia Home Rule
18 Charter be amended to call upon the Council of
19 the City of Philadelphia, and we changed it to
20 in considering any proposed legislation
21 presented to the Council to be contingent of
22 the desire of the citizenry that the Council
23 enact no law and take away the liberty of
24 individuals of Philadelphia by prohibiting
25 smoking in public places and in the workplace.

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2 COUNCIL PRESIDENT Verna: Thank you.

3 Are there any questions from Members
4 of the Committee?

5 The Chair recognizes Councilman
6 Nutter.

7 COUNCILMAN NUTTER: Thank you, Madam
8 Chair. Madam Chair, if I could have
9 permission to ask our colleague a couple
10 questions.

11 Councilman, I just need to at least
12 get a little better sense and understanding of
13 the goal with regard to both the question and
14 the proposed change to the Charter. I have
15 read both, but I just want to get some clarity
16 on what is it that we're seeking to accomplish
17 by going this particular route.

18 COUNCILMAN MARIANO: I'm sorry,
19 Councilman. I was getting whispered in the
20 ear.

21 COUNCILMAN NUTTER: You were being
22 tremendously distracted by the young John
23 Lisko.

24 COUNCILMAN MARIANO: I'm getting
25 that multi-tasking thing down, but --

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2 COUNCILMAN NUTTER: I understand
3 that you were distracted. I'll repeat it.

4 Councilman, I've read both the
5 proposed Charter change na the question. And
6 I'd just like to have a clear understanding of
7 what the goal is with regard to this method of
8 passing a piece of legislation and amending
9 the Home Rule Charter. What are we trying to
10 accomplish here?

11 COUNCILMAN MARIANO: Councilman, in
12 a nutshell without going into the long
13 explanation is I'm trying to let the citizens
14 of the City of Philadelphia see how they feel,
15 not to take our job away as legislators.

16 The problem with this legislation
17 and your legislation, as I see it, with all
18 well intentions from both of us is cigarettes
19 are not illegal in the United States. The
20 reality is the tobacco industry is a driver of
21 our national and state economy. And then
22 there's a lot things that we don't
23 understand -- I mean, we understand, but we
24 really haven't gotten into the economics. As
25 usual with legislation in this Chamber, we try

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2 to do the best job we can with what's giving
3 to us. So you come with an idea. My idea was
4 simple, so simple it goes without saying. I
5 was just trying to get the people to see what
6 they want. But I don't want to hinder this
7 body, handcuff us by doing any legislation.
8 There's a 50/50 chance that people in City are
9 going to say, "We like to smoking ban. We
10 think it's a good idea." And they're going to
11 be Americans and go to the ballot in May and
12 vote if this happens. But again, they voted
13 for us to be City Councilpeople. I don't
14 think we're taking our job and giving it to
15 the people, we're just asking for a survey.
16 It's basically a survey being put on the
17 ballot in May, and we'll see how people feel.

18 I firmly still believe there's a lot
19 of people here that are non-smokers that are
20 just concerned with government being involved
21 in the rights of individuals how to make
22 livings as far as these taverns and clubs and
23 everything goes. I mean, this thing has been
24 drawn out. There's nothing that archaic or
25 nothing that hidden here. That's simple.

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2 My problem was, as I asked people to
3 write this thing, they wrote it how I thought
4 it should be. And when I got it, we had some
5 questions the other day and we asked for an
6 opinion from Pedro and we have one. He's the
7 top guy, I think.

8 COUNCILMAN NUTTER: Your basic
9 position here is this amounts to a public
10 opinion poll?

11 COUNCILMAN MARIANO: Pretty much, a
12 survey. But that's the only way we could do
13 it. I just think if we hold off on your
14 legislation to see what happens here in May --
15 that's totally up to you and this body, but if
16 we get this on the ballot we may find out that
17 the people do want a smoking ban or they
18 don't.

19 There's a lot of things going on
20 here. I think that the tavern owners came
21 here the other day and had a terrible
22 presentation. I think there was a lot of
23 working people that didn't get here. I got
24 bashed by one of the union leaders because of
25 smoking, secondhand smoke. There's a lot of

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2 people here that need to be spoken for.

3 There's a lot of people here, there's a lot of

4 women, there's a lot of minorities, and a lot

5 people in the majority in this City who are

6 smokers and are non-smokers that work in these

7 bars and clubs. I firmly believe no matter

8 what they tell us from New York City or

9 anywhere else that smoking is an evil, it is

10 definitely an evil. But I don't think it's my

11 job as a City Councilman or yours to tell

12 people that they shouldn't be able to smoke in

13 their establish. Its strictly an economics

14 decision for the people that own them

15 particular establishments and it's a decision

16 for the people that are going out for

17 entertainment where they want to go. If the

18 United States Congress and the Senate want to

19 pass a bill banning cigarettes in public

20 places in this country, I think it would be a

21 great thing. But so far, Senator Santorum or

22 Specter haven't called me to ask for my input.

23 My phone number is 686-3448 if they would like

24 to.

25 COUNCILMAN NUTTER: I got you. Just

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2 a couple other quick questions.

3 COUNCILMAN MARIANO: Sure.

4 COUNCILMAN NUTTER: Councilman, are
5 you aware of any other legislative efforts
6 over the past 53 years or so involving the
7 Home Rule Charter that the purpose of which
8 was to conduct a citizen survey.

9 COUNCILMAN MARIANO: I think by
10 maybe using the word "citizen survey," I may
11 have sent you down a different road. I think
12 we just did something -- I'm looking at the
13 learned Mr. Lisko. Didn't we do something
14 with a gun ban?

15 COUNCILMAN NUTTER: I think that's
16 moving through the process.

17 COUNCILMAN MARIANO: Councilman
18 Clarke's gun ban.

19 I don't know. I really don't know
20 that. I didn't research it. It is quite
21 possible, but it's quite possible the other
22 way.

23 COUNCILMAN NUTTER: With regard to
24 the question itself, it is written in such a
25 way that I would at least have a concern as to

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2 what the meaning of a vote either way would
3 be. If this were to be on the ballot and as
4 you read this question, it starts out with the
5 usual language of "Shall the Home Rule Charter
6 be amended," which is what all the ballot
7 questions related to Charter change says, but
8 then it seems to take a turn by saying there
9 needs to be consideration of the desires of
10 the citizens, but then it takes a turn and
11 says that we enact no law to take away the
12 liberty. So what does a yes vote mean to this
13 question and what does a no vote mean to this
14 question?

15 COUNCILMAN MARIANO: Councilman, a
16 yes vote would mean they don't want us to
17 legislate smoking in public places. A no vote
18 would mean that they do want to legislate
19 smoking in public places.

20 COUNCILMAN NUTTER: So if you're --

21 COUNCILMAN MARIANO: Yes means no
22 and no means yes, Councilman. It's not the
23 best way to do it. And in hindsight --
24 Politics 101 they tell us never say anything
25 that yes means no and no means yes.

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2 COUNCILMAN NUTTER: So if you are in
3 favor of a smoke-free environment you would
4 have to vote no.

5 COUNCILMAN MARIANO: You would have
6 to vote no.

7 COUNCILMAN NUTTER: And if you're
8 against a smoke-free environment, you'd have
9 to vote yes.

10 COUNCILMAN MARIANO: You would have
11 to vote yes.

12 COUNCILMAN NUTTER: Which I think,
13 as we both know, is somewhat counterintuitive.

14 COUNCILMAN MARIANO: Very confusing.

15 COUNCILMAN NUTTER: And could be
16 very confusing. And there is another measure
17 that will more than likely be on the ballot
18 involving Councilman Clarke's legislation,
19 which at least has some interplay between the
20 City and the State and first class cities and
21 state jurisdiction and the like. So I would
22 tangentially also be concerned with regard to
23 if we have a ballot question that is, at least
24 for our discussion here I think you at least
25 acknowledge is potentially somewhat confusing

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2 to the voters, what impact that might possibly
3 have on another ballot question.

4 COUNCILMAN MARIANO: I think the
5 people in the City of Philadelphia are as
6 intelligent as you, and I think they can
7 figure it out.

8 COUNCILMAN NUTTER: They're more
9 intelligent than me. If I was really
10 intelligent, I'd probably be doing something
11 else. So it is clearly establishing my low
12 level of intelligence.

13 COUNCILMAN MARIANO: Councilman, I
14 think if we were both intelligent, we would
15 probably own a gas station together and we'd
16 be making good money. Except your side
17 wouldn't sell cigarettes and mine would
18 probably.

19 COUNCILMAN NUTTER: Well, as the
20 gentleman in the natural, I should have been
21 in a farmer.

22 Okay, I think basically understand.

23 COUNCILMAN MARIANO: Thank you, my
24 friend.

25 COUNCILMAN NUTTER: I appreciate it.

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2 Thank you, Councilman.

3 Thank you, Madam Chair.

4 COUNCIL PRESIDENT Verna: Thank you.

5 The Chair recognizes Councilman
6 DiCicco.

7 COUNCILMAN DICICCO: Thank you,
8 Madam President.

9 I have very similar concerns that my
10 colleague Councilman Nutter has. And at the
11 end of their conversation between Mariano and
12 Nutter, traditionally in the 37 or 38 years
13 that I've been involved in politics I know
14 there's a specific percentage of people who
15 when they go in to vote on questions
16 automatically vote no. They don't even bother
17 to look at it. I have my own theory as to why
18 that happens, but that's generally what
19 occurs. There's a high percentage of people
20 who would traditionally vote no. So the
21 confusion part to the voters, I think, is
22 something we really need to take into
23 consideration as we're contemplating our vote
24 on this resolution.

25 The other concern for me is if

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2 hypothetically the resolution is on the ballot
3 and the resolution succeeds, assuming that
4 Bill No. 63, Councilman Nutter's bill, the
5 smoking ban does not pass, does not come out
6 of Committee, we're going to find ourselves
7 back in this same situation next year as a
8 body to debate the issue of a smoking ban.
9 Because if the resolution is voted up,
10 we're going to assume that the majority of the
11 voters in the City of Philadelphia want a ban
12 on smoking. I don't know if we want to go
13 through this exercise again.

14 Now, if polling is to be looked at
15 scientifically, as of today, and I don't have
16 an accurate count and I'm sorry I didn't keep
17 all the e-mails, but I'm still getting
18 e-mails. And I said this last week.
19 Conservatively, I thought 80 percent of the
20 people I've been receiving e-mails from -- and
21 I think everyone in Council is getting the
22 same e-mails, it's kind of a generic --
23 probably more in the 90 percentile of the
24 folks who have taken time to express their
25 opinion on Bill 63 are non-Philadelphia

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2 residents. Non-Philadelphia residents. So
3 one could conclude that Philadelphia people
4 either don't want the ban or they don't care
5 enough about it. I don't think that's
6 accurate either. I don't know if anything we
7 can do will give us an accurate
8 accountability. There's people on both sides.
9 In this Council, we're pretty much divided
10 right down the middle in this Council on the
11 issue of the smoking ban.

12 So I have a concern, like I said,
13 that we may not get an accurate accountability
14 from the citizens, not because they're not
15 intelligent enough, but I just don't know if
16 it's going to be of that much interest to them
17 based, again, on the lack of response I
18 received from the citizens of Philadelphia.
19 And this year in particular in the DA and
20 Controller election that's coming up is
21 probably one of the lowest turnouts in any
22 municipal election in this City's history. So
23 we're going to have the fewest number of
24 people coming out. We may get a little tick
25 up because of this, but I don't see an

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2 overwhelming number of people coming out. I
3 mean, we had a hard time getting 45 percent of
4 the people out to vote for a Mayor.

5 So no disrespect to you, Councilman
6 Mariano, I'm just not sure the goal that I
7 think that you're aiming for we're going to be
8 able to achieve by way of this resolution. I
9 think we're going to have to bite the bullet,
10 each and every one of us, and make a decision
11 on what we believe is the bright thing to do
12 on this ban. And some of us will suffer the
13 consequences for whatever way we vote, but
14 that's what we get paid to do.

15 So I don't want to be against the
16 resolution in a hostile way, I just do have a
17 concern that we're not going to, at the end of
18 the day, be any further down the road than we
19 are today. In fact, it may even lead to more
20 confusion, in my opinion.

21 COUNCILMAN MARIANO: Thank you,
22 Councilman. Actually, I agree with 90 percent
23 of what you said. Let me just say again that
24 it's a non-binding resolution. And you know
25 what? I get your point. People 45 percent

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2 want to vote Mayor and then the other 55
3 percent complain about the person that we
4 elect. But I do believe -- and this might
5 sound strange coming from me -- if this
6 happens and it turns out people do want a
7 smoking ban, again, it's not binding, but I do
8 think, as you said, half of the Council may
9 think that a ban is in order. Maybe it is an
10 issue we should address. It might not be a
11 total smoking ban, but there may be something
12 we can do here with grandfathering people and
13 filtration systems. I hear the guy from Prime
14 Rib keeps echoing in my head, you know, "I put
15 the system in because I thought something was
16 going to happen from last time."

17 So personally, I take the challenge.
18 Whatever happens to this ban, again, it's not
19 binding. I'm not saying if people wanted a
20 smoking ban, I'd be for it. But I could
21 guarantee is I would work with Councilman
22 Nutter or anyone else that wanted to do an
23 objective smoking ban that took into
24 consideration everything, the people who have
25 to work in this industry and people that have

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2 businesses for 5, 10, 15, 20 years. I
3 personally don't see any problem with any new
4 establishment opening up that would be smoke
5 free from a certain point in time forward.
6 And I know you and I talked a little bit about
7 that. But I get your point and I understand
8 your reluctance to vote for this.

9 COUNCILMAN DICICCO: And I will tell
10 you that as recent as last evening -- I stayed
11 in all night last night. I was watching a lot
12 of television, and ironically a couple of
13 shows that I was switching on, CN8 or NBC,
14 whatever that is, the network channels, there
15 were a number of discussions going on about
16 smoking and the effects of secondhand smoke.
17 I wish everybody would quit smoking. There's
18 no question about it. And I don't want to get
19 into the debate on Bill 63. I just think that
20 people do have choices to make. And the irony
21 of the e-mail from suburban folks and me and
22 everything else is they come to the City of
23 Philadelphia and spend some money and they
24 like to come spend more. Well, they're coming
25 from townships and counties that do not have a

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2 smoking ban, but yet they still choose to come
3 to Philadelphia occasionally. And there are a
4 number of restaurants, and they're all listed,
5 if you look in any directory, it will tell you
6 whether there is smoking permitted or not.

7 For me, I wish everyone would stop
8 smoking. I don't like to be sitting across
9 from a table or someone who is smoking while
10 I'm eating dinner, but there are choices. And
11 I'm probably leaning to the other side on
12 this, on not doing the ban because of the
13 choices that people do have to make. I just
14 think, again, if we do this, we're going to
15 wind up right where we are next year
16 discussing this whole issue again, in my
17 opinion. Thank you.

18 COUNCILMAN MARIANO: Thank you,
19 Councilman.

20 COUNCIL PRESIDENT VERA: The Chair
21 recognizes Councilman Goode.

22 COUNCILMAN GOODE: Thank you, Madam
23 President. I have a couple of questions for
24 Councilman Mariano as well.

25 Let me first state my position on a

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2 number of these different issues. One, I am
3 for the smoking ban and I am for the smoking
4 ban because I believe that secondhand smoke
5 kills, and that's a simple enough issue for.
6 It's not an issue that I understood before
7 Councilman Nutter proposed legislation in the
8 last term, but sitting through a number of
9 different hearings, it has become abundantly
10 clear to me, while it's debatable, that
11 secondhand smoke kills according to the facts
12 and research I've reviewed.

13 I'm also for a non-binding
14 referendum asking people on major issues like
15 this, what they think, as long as it is
16 non-binding.

17 I cannot be for this legislation,
18 though, because I don't believe it asks the
19 question that I can support, which would be a
20 simple question "Do you support a ban on
21 smoking in public places and workplaces?" And
22 I would listen to a non-binding referendum,
23 not follow it, but listen to it in terms of
24 knowing what the will of the people is. But
25 still if the majority of people in a

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2 non-binding referendum were not for a smoking
3 ban and I believe that secondhand smoke
4 killed, I would still vote for a smoking ban.
5 So that's my position.

6 My question is, while you're doing
7 an amendment today clarifies the legislation
8 that allows it to supposedly still be
9 non-binding, do you believe that your ballot
10 question actually asks the question that you
11 want it to?

12 COUNCILMAN MARIANO: Yes,
13 Councilman, it does. It's probably not the
14 way I would have crafted it if I crafted it
15 myself. I get your question and I think I get
16 the underlying meaning. If I could do it
17 again, I probably wouldn't have did it this
18 way. I did it in a hurry. I did it out of an
19 idea I had a couple weeks ago. And maybe it's
20 my lack of understanding of the process. I
21 get people to write these. I talk to my
22 legislative aid, he talks to the Law
23 Department. You would figure if the Law
24 Department wrote something, it would be legal
25 and fine and then I could go back to the City

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2 Solicitor and ask for an opinion, which I did.
3 But I hear you and I would support the
4 resolution you talked about too. It probably
5 should have been simpler.

6 COUNCILMAN GOODE: What I'm saying
7 is -- and Councilman Nutter alluded to it,
8 Councilman DiCicco alluded to it. This
9 question actually ask whether we should change
10 the Home Rule Charter to have Council consider
11 what the public says. It does not ask the
12 public for its opinion.

13 COUNCILMAN MARIANO: I think it's my
14 understanding that that's what the Law
15 Department told me it had to be.

16 COUNCILMAN GOODE: But it does not
17 ask the public for its opinion. It asks
18 whether the Home Rule Charter should be
19 changed for Council to consider its opinion,
20 but it does not ask the public specifically
21 for its opinion.

22 COUNCILMAN MARIANO: Councilman,
23 again, that was what I thought I was getting
24 out of them. It wasn't what I really wanted,
25 but in this life and especially in this

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2 legislative life, you get what you can get and
3 you put it up and we vote for it or we vote
4 against it.

5 COUNCILMAN GOODE: But do you agree
6 I could be for the things that I have
7 mentioned, for the ban, for a referendum and
8 actually for this question and still be for a
9 ban?

10 COUNCILMAN MARIANO: Councilman,
11 what I can say -- and please don't take this
12 wrong. If you have an amendment, I'd be glad
13 to see it. We took this language from the
14 Constitution, believe it or not. That's what
15 I was just told. The writer is sitting behind
16 me.

17 COUNCILMAN GOODE: I know Lisko just
18 gave you a statement, but he wasn't listening
19 to my question. He was talking to you rather
20 listening to my question.

21 COUNCILMAN MARIANO: I'll tell you
22 what, if we want to prolong this, we can put
23 Mr. Lisko on the stand.

24 COUNCILMAN GOODE: I'm just going to
25 ask the question again. You can answer it or

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2 he can answer.

3 COUNCILMAN MARIANO: Let him answer
4 the question. He works for me. I gave
5 authority to write this.

6 COUNCILMAN GOODE: We're actually in
7 the public meeting now.

8 The question is: I'm for a ban, I'm
9 for a referendum, could I, in fact, vote for
10 this question and still be for a ban?

11 COUNCILMAN MARIANO: I think you
12 could be, yes. I think the people figured it
13 out.

14 COUNCILMAN GOODE: Then it doesn't
15 answer the question we need to answer.

16 COUNCILMAN MARIANO: Ask me again.

17 COUNCILMAN GOODE: I could be for a
18 ban, I could be for a referendum, answer this
19 question affirmatively but still be for a ban.

20 COUNCILMAN MARIANO: I would think
21 not.

22 COUNCILMAN GOODE: The question is
23 why? By me voting yes on this question, how
24 does that mean I'm not for a referendum and
25 for a ban?

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2 COUNCILMAN MARIANO: Voting yes,
3 like I told Councilman Nutter, means no.

4 COUNCILMAN GOODE: I'm not clear it
5 does. All this says is I want to change the
6 Home Rule Charter to call upon Council to
7 consider any proposed legislation not to enact
8 any law taken away liberty, and it doesn't
9 mean that I don't want a referendum. It
10 doesn't mean I won't listen to a referendum.
11 It means that this in itself is not a
12 referendum. It's asking whether we should
13 change the Home Rule Charter to have Council
14 consider a referendum, but this is not a
15 referendum in and of itself. So I could be
16 for a ban, I could be for a referendum, vote
17 for this at the polls, and this still would
18 not be a referendum whether there should be a
19 ban or not. I could still be for a ban.
20 That's the problem.

21 COUNCILMAN MARIANO: All right. I
22 understand. I'm not going to give you the
23 answer you want, so we can do this all day.
24 You're right; you are right.

25 COUNCILMAN GOODE: Thank you.

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2 COUNCILMAN MARIANO: I'm still
3 floating it and you can vote against it,
4 that's the beauty of this thing.

5 COUNCILMAN GOODE: Okay, no problem.
6 Thank you, Madam President.

7 COUNCILMAN MARIANO: Councilman, the
8 editorial boards and the people who don't like
9 it are going to call me stupid anyhow; it
10 don't matter. It's what I had to do to get to
11 this point. It wasn't what I would have
12 wanted to do, but it's what I had to do
13 because we were in a rush. I mean, if I could
14 do legislation perfect every time, I'd be the
15 Daily News Editorial Board. I'm not, I don't
16 want to be. I'm concerned about the people
17 that work in those taverns and those bar maids
18 and bartenders. And I'm sure you are too. I
19 get that from your point.

20 COUNCILMAN GOODE: I'm not against
21 the referendum, but this is not a referendum.

22 COUNCILMAN MARIANO: Thank you.

23 COUNCILMAN GOODE: Thank you.

24 Thank you, Madam President.

25 COUNCIL PRESIDENT VERNA: You're

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2 welcome.

3 The Chair recognizes Councilman
4 Kelly.

5 COUNCILMAN KELLY: Thank you, Madam
6 President.

7 I just want to say that I'm not too
8 crazy over this amendment for the simple
9 reason I don't like to push off all of our
10 legislative responsibilities onto the public.

11 But having said that, I think that
12 there is some support I know that I'm going to
13 be giving this amendment for the simple reason
14 that we have to do something to keep
15 businesses in Philadelphia and to also bring
16 additional businesses into Philadelphia.

17 I would probably be in favor of a
18 smoking ban if -- and I think Councilman
19 DiCicco alluded to this -- that if the State
20 of New Jersey, if our surrounding counties of
21 Bucks, Montgomery, Delaware, Chester, if they
22 all had a ban, then I think I could support
23 it. But I don't want to see us targeting our
24 businesses in Philadelphia. That's the
25 problem that I have.

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2 I know the intent of the sponsor is
3 well deserved. I think it's a good intention
4 to keep everyone healthy in Philadelphia, but
5 I don't think it should be done at the expense
6 of our tavern owners and the people in the
7 restaurants, the people that put a lot of
8 energy, they put their financial resources,
9 some of them their life savings into their
10 businesses, only to have us dictate who their
11 customers are going to be. I don't think it's
12 fair.

13 I would like to see everyone on a
14 level playing field. And that's why I
15 positively think there should be some support
16 for these owners. After all, it was only just
17 a few years ago we targeted them for
18 additional per drink tax. Some of them still
19 haven't recovered from that. They are being
20 probably legislated by many, many different
21 departments. They have regulations that they
22 had to adhere to from L&I. They have the
23 State Police. They have the Liquor Control
24 Board. They have the Health Department. They
25 have all these department on their back and

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2 they're constantly being harassed, I think.
3 But there again, I think they need some
4 support and I think they need some support in
5 this Council. And that's why I think that
6 this amendment is going to be a non-binding
7 amendment. I don't think there's any reason
8 that I can think of that we shouldn't support
9 this amendment because it's only a poll to see
10 which way that the public thinks about this
11 smoking ban. Therefore, I would like to go on
12 record as saying that I am going to support
13 this amendment.

14 Thank you, Madam President.

15 COUNCIL PRESIDENT Verna: Does
16 anyone else want to be recognized?

17 (No response.)

18 COUNCIL PRESIDENT Verna: I would
19 ask Members that were in the Chamber to please
20 return.

21 The Chair recognizes Councilman
22 Mariano.

23 COUNCILMAN MARIANO: Thank you,
24 Madam President. I want to offer this
25 amendment to ordinance 050165.

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2 COUNCIL PRESIDENT Verna: Is there a
3 second?

4 COUNCILMAN KELLY: Second.

5 COUNCIL PRESIDENT Verna: It has
6 been moved and seconded that the amendments
7 provided by Councilman Mariano be approved.
8 All in favor will indicate by saying
9 aye.

10 (Aye.)

11 COUNCIL PRESIDENT Verna: Those
12 opposed?

13 COUNCILWOMAN TASC0: What are we
14 voting on?

15 COUNCIL PRESIDENT Verna: We are now
16 considering the amendments to Resolution NO.
17 050176.

18 (Pause.)

19 COUNCIL PRESIDENT Verna:
20 Councilman, I believe you made a motion to
21 approve amendments offered for Resolution
22 050176, did you not?

23 COUNCILMAN MARIANO: Yes, I did.

24 I already did the amendment to the
25 ordinance. Now I'm doing the amendment to the

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2 resolution.

3 COUNCIL PRESIDENT Verna: Did you
4 offer the amendments to the resolution?

5 COUNCILMAN MARIANO: I thought I
6 just did. Well, let's do it again. I'll do
7 them both again so we know.

8 I move for the adoption of the
9 proposed amendments for Resolution 050176.

10 COUNCIL PRESIDENT Verna: Is there a
11 second?

12 (Duly seconded.)

13 COUNCIL PRESIDENT Verna: It has
14 been moved and seconded that the amendments be
15 approved to Resolution No. 050176.

16 All in favor will indicate by saying
17 aye.

18 (Aye.)

19 COUNCIL PRESIDENT Verna: Those
20 opposed?

21 COUNCILWOMAN TASCIO: No.

22 COUNCIL PRESIDENT Verna: The ayes
23 have it, and the amendments have been adopted.

24 The Chair now recognizes Councilman
25 Mariano regarding Bill No. 050165.

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2 COUNCILMAN MARIANO: I want to
3 introduce amendments to Ordinance No. 050165.
4 I make a motion to amend Ordinance No. 050165.

5 COUNCIL PRESIDENT Verna: Is there a
6 second?

7 (Duly seconded.)

8 COUNCIL PRESIDENT Verna: It has
9 been moved and seconded that the amendments to
10 Bill No. 050165 be approved.

11 All in favor will indicate by saying
12 aye.

13 (Aye.)

14 COUNCILWOMAN TASC0: Madam
15 President, I'd like to speak.

16 COUNCIL PRESIDENT Verna: The Chair
17 recognizes Councilwoman Tasco.

18 COUNCILWOMAN TASC0: I want to be
19 clear on why I'm voting against these
20 amendments. I don't have any problems with
21 the public letting us how they feel. What I
22 do have a problem with is the decision by the
23 Law Department. I'm not sure what this all
24 means. And as I understand it, we're amending
25 the Charter, and I'm not really comfortable so

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2 that's why I'm not voting for it.

3 COUNCIL PRESIDENT Verna: Has it has
4 been moved and seconded that the amendments be
5 adopted.

6 All in favor will signify by saying.
7 (Aye.)

8 COUNCIL PRESIDENT Verna: Those
9 opposed?

10 COUNCILWOMAN TASC0: No.

11 COUNCIL PRESIDENT Verna: The ayes
12 have it and the bill is amended.

13 The Chair recognizes Councilman
14 Mariano again regarding the resolution.

15 COUNCILMAN MARIANO: I want to pass
16 with a favorable recommendation Resolution No.
17 050176, as amended.

18 COUNCIL PRESIDENT Verna: All in
19 favor?

20 (Aye.)

21 COUNCIL PRESIDENT Verna: Those
22 opposed?

23 (No.)

24 COUNCIL PRESIDENT Verna: Roll call.

25 COUNCILMAN MARIANO: And also I want

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2 a suspension of the Rules.
3 COUNCIL PRESIDENT Verna:
4 Councilwoman Blackwell.
5 COUNCILWOMAN BLACKWELL: Aye.
6 COUNCIL PRESIDENT Verna: Councilman
7 Clarke.
8 COUNCILMAN CLARKE: Aye.
9 COUNCIL PRESIDENT Verna: Councilman
10 DiCicco.
11 COUNCILMAN DICICCO: No.
12 COUNCIL PRESIDENT Verna: Councilman
13 Goode.
14 COUNCILMAN GOODE: No.
15 COUNCIL PRESIDENT Verna: Councilman
16 Kelly.
17 COUNCILMAN KELLY: Aye.
18 COUNCIL PRESIDENT Verna: Councilman
19 Kenney.
20 COUNCILMAN KENNEY: No.
21 COUNCIL PRESIDENT Verna: Councilman
22 Mariano.
23 COUNCILMAN MARIANO: Aye.
24 COUNCIL PRESIDENT Verna:
25 Councilwoman Miller.

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2 COUNCILWOMAN MILLER: Aye.

3 COUNCIL PRESIDENT VERNA: Councilman

4 Nutter.

5 COUNCILMAN NUTTER: No.

6 COUNCIL PRESIDENT VERNA: Councilman

7 O'Neill is not here.

8 Councilman Ramos is not here.

9 Councilwoman Brown.

10 COUNCILWOMAN REYNOLDS BROWN: Aye.

11 COUNCIL PRESIDENT VERNA: Councilman

12 Rizzo.

13 COUNCILMAN RIZZO: No.

14 COUNCIL PRESIDENT VERNA:

15 Councilwoman Tasco.

16 COUNCILWOMAN TASCO: No.

17 COUNCIL PRESIDENT VERNA:

18 Councilwoman Verna, no.

19 The ayes are 6, the nays are 7. The

20 motion fails.

21 The Chair recognizes Councilman

22 Mariano regarding Bill 050165 -- it's no sense

23 voting it. You have to have the resolution.

24 COUNCILMAN MARIANO: I give up. I

25 did my best.

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2 COUNCIL PRESIDENT Verna: Just say
3 that you're withdrawing.

4 COUNCILMAN MARIANO: I'm withdrawing
5 that ordinance right now.

6 COUNCIL PRESIDENT Verna: At the
7 request of the sponsor, Bill No. 010165 is
8 withdrawn.

9 (Council adjourned at 10:19 a.m.)

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RE: COMMITTEE OF THE WHOLE

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Lisa C. Bradley, RPR

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