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COUNCIL OF THE CITY OF PHILADELPHIA

3

COMMITTEE ON STREETS AND SERVICES

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Room 400, City Hall
Philadelphia, Pennsylvania

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Wednesday, June 9, 2010, 2:00 p.m.

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BILL 100447 - Amending Section 9-213 of the Philadelphia Code, entitled "Farmers' Markets," by adding, removing and modifying various permissible locations for farmers' markets, all under certain terms and conditions.

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RES. 100451 - Authorizing City Council's Committee on Streets and Services to hold public hearings to explore the issues and impact of the National Park Service's decision not to renew the commercial use authorization permit, which is allows amphibious tour vehicles to operate a passenger loading and unloading zone on Sixth Street between Market and Arch Streets

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COMMITTEE MEMBERS PRESENT:

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Frank DiCicco, Chair
Maria Quiñones-Sanchez, Vice Chair
William K. Greenlee
Curtis Jones, Jr.
Donna Reed Miller

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1 6/9/10 - STREETS & SERVICES - BILL 100447

2 COUNCILMAN DiCICCO: Good
3 afternoon, everyone. This is the hearing
4 on the Committee on Streets and Services.

5 We do have a quorum. To my
6 extreme left is Councilwoman Sanchez. To
7 my immediate left is Councilman Greenlee.
8 To my immediate right is Councilman
9 Jones.

10 My name is Frank DiCicco, and
11 I'm the chair of this committee. And we
12 also have Councilwoman Miller who is also
13 a member of this committee.

14 We have a bill and a resolution
15 today. What we're going to do is, we're
16 going to hear testimony on the bill.
17 We'll recess the hearing, go into the
18 public meeting to vote that bill out.
19 And we will then go back into the public
20 hearing for the purposes of collecting
21 testimony -- gathering testimony for the
22 resolution.

23 THE CLERK: Bill No. 100447, an
24 ordinance amending Section 9-213 of the
25 Philadelphia Code, entitled "Farmers'

1 6/9/10 - STREETS & SERVICES - BILL 100447
2 Markets," by adding, removing and
3 modifying various permissible locations
4 for farmers' markets, all under certain
5 terms and conditions.

6 (Witness comes forward.)

7 COUNCILMAN DiCICCO: Good
8 afternoon, Mr. Haigler.

9 MR. HAIGLER: Good afternoon,
10 Chairman DiCicco and members of the
11 committee. I am Otis Haigler, Jr.,
12 Director of Legislative Affairs for the
13 Department of Licenses and Inspections.

14 Today I'm here to provide
15 testimony on Bill 100447, which, if
16 enacted, will amend Section 9- 213,
17 entitled "Farmers' Markets," by adding,
18 removing, and modifying various
19 permissible locations within the City of
20 Philadelphia.

21 The Department of Licenses and
22 Inspections offers no objections to this
23 bill, and I will be happy to answer any
24 questions.

25 Thank you very much.

1 6/9/10 - STREETS & SERVICES - BILL 100447

2 COUNCILMAN DiCICCO: Thank you.

3 Mr. Haigler.

4 Do we have any questions for
5 this witness from the committee?

6 (No questions.)

7 COUNCILMAN DiCICCO: Seeing
8 none, we will now recess this hearing and
9 go into a public meeting, and we're
10 getting one person back to get a quorum
11 so that we can vote this bill out.

12 Thank you, Mr. Haigler.

13 MR. HAIGLER: You're welcome.

14 COUNCILMAN DiCICCO: We do have
15 a quorum.

16 Councilman Jones?

17 COUNCILMAN JONES: We'd like to
18 report the bill out with a -- Bill No.
19 100451 --

20 COUNCILMAN DiCICCO: No, the
21 other one.

22 COUNCILMAN JONES: We'd like to
23 report out Bill 100447 out with a
24 favorable recommendation and that the
25 rules of Council be suspended for our

1 6/9/10 - STREETS & SERVICES - BILL 100447
2 next immediate hearing.

3 (Motion duly seconded.)

4 COUNCILMAN DiCICCO: It's been
5 properly moved and seconded that Bill No.
6 100447 be reported out this committee
7 with a favorable recommendation and that
8 the rules of Council be suspended.

9 All those in favor?

10 Those opposed?

11 The bill's approved. Thank
12 you.

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1 6/9/10 STREETS & SERVICES - RES. 100451

2 COUNCILMAN DiCICCO: We will
3 now go back into the public hearing.

4 I would ask Mr. McGonagle to
5 read the title of the resolution.

6 THE CLERK: Resolution No.
7 100451, a resolution authorizing City
8 Council's Committee on Streets and
9 Services to hold public hearings to
10 explore the issues and impact of the
11 National Park Service's decision not to
12 renew the commercial use authorization
13 permit, which is allows amphibious tour
14 vehicles to operate a passenger loading
15 and unloading zone on Sixth Street
16 between Market and Arch Streets.

17 COUNCILMAN DiCICCO: Thank you.

18 For the purposes of my
19 colleagues on this committee and for
20 others who are in the office, I'm just
21 going to just try to give a brief
22 thumbnail overview of what the purpose of
23 this hearing is all about.

24 A few years ago -- and I think
25 it was back in 2004, 2004, after about

1 6/9/10 STREETS & SERVICES - RES. 100451
2 two years' worth of -- five years --
3 2005. After about two years' worth of
4 work involving my office, the Streets
5 Department, the National Park Service,
6 the Department of L&I, and numerous
7 entities who either have operations
8 and/or businesses in the area that we
9 refer to as the Independence Mall area of
10 the historical district, and those
11 included the Constitution Center, the
12 Independence Visitors Center, the horse
13 carriage industry, the double-decker bus,
14 and the Ride the Ducks, to name a few.

15 The reason we had hearings back
16 five, six, seven years ago was to try to
17 create an environment that was not only
18 advantageous to the vendors, and
19 including all of those who I mentioned,
20 and I'm sure I left a few out, but to
21 create a environment in and around the
22 Independence Mall area as it relates to
23 -- as it related to vendors, to create an
24 environment that was a safe environment
25 for tourists who are in that vicinity and

1 6/9/10 STREETS & SERVICES - RES. 100451
2 who would be looking to either visit some
3 of the buildings, the historical
4 buildings, and/or utilize and participate
5 in the utilization of some of the fun
6 vending -- I'm sorry, I'm getting ahead
7 of myself -- some of fun things that we
8 have around the park. That is, either
9 taking a horse-carriage ride, riding in a
10 double-decker bus, taking a ride on the
11 Ducks, whatever else that was out there.

12 There was a time before this
13 legislation had been enacted that all of
14 these various entities were competing for
15 sidewalk space, for street space to park
16 their vehicles in order to be able to
17 take advantage of the customer base,
18 which is the tourists. And it created a
19 very unfriendly environment and a very
20 unsafe environment for the progress and
21 the people who work for those operators
22 and tourists alike.

23 So we all came together as a
24 group of people who had a vested interest
25 in the Independence Mall area and in the

1 6/9/10 STREETS & SERVICES - RES. 100451
2 businesses to see if we could find a way
3 in which we could do something in a much
4 more cooperative and safer way so that
5 all people who would be participating and
6 visiting the Independence Mall would have
7 a safe environment and a fun and friendly
8 environment in which to participate in.

9 As a result of that -- and I
10 will ask Mr. Abernathy to come up and
11 give some background on that as well.

12 If you've been out to the mall
13 area in recent years, you will see
14 dedicated staging areas for all of the
15 entities that I've mentioned; in
16 particular, the Ducks, the double-deck
17 buses, and the horse carriages.

18 And it's worked very well over
19 these past few years. We'll get into
20 more technical things as to why -- the
21 other advantages by creating the staging
22 areas not only to the industry but to the
23 City of Philadelphia in encouraging and
24 promoting its tourism operations.

25 About three years ago, I was

1 6/9/10 STREETS & SERVICES - RES. 100451
2 contacted by federal judge, Timothy
3 Savage, who has an office, judicial
4 chambers, in the federal courthouse at
5 Sixth and Market, asking me to do my part
6 as a councilman for the district who had
7 been the sponsor of the original
8 legislation, to have the Ducks relocate
9 to another portion of the mall, another
10 area of the mall, for the purposes of, in
11 his opinion -- and there's been a lot of
12 back and forth, and I won't belabor this
13 point, 'cause we'll get some testimony on
14 it, because in the judge's opinion based
15 on what he claims was the opinion of
16 Homeland Security, that the Ducks posed a
17 threat to the federal courthouse.

18 What the judge has been
19 suggesting now for the last three years
20 or more is that the Ducks -- someone, a
21 terrorist or terrorist group, would
22 either commandeer or purchase a
23 amphibious vehicle, similar to the Duck
24 boats that we see out there, obviously
25 painted to look like a Duck, pack that

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2 vehicle with explosives to blow up and
3 possibly blow up the federal courthouse.

4 I have taken exception with
5 that theory. And one of the witnesses,
6 Mr. Friel, just reminded me that on a
7 daily basis, at peak hour, over 4,000
8 vehicles travel south on Sixth Street,
9 'cause the area we're talking about is
10 the Ducks now -- their staging area is on
11 the east side of Sixth Street, between
12 Market and Arch. People who are going to
13 take a ride on the Ducks queue up on that
14 sidewalk.

15 So therein lies the problem as
16 far as Judge Savage is concerned, and
17 we've had numerous meetings with the
18 judge, the Park Service, and all of the
19 entities that I mentioned earlier about
20 this supposedly threat to the federal
21 courthouse.

22 And I just want to go on record
23 now, and I'll probably repeat it over and
24 over again. I find that to be bordering
25 on the ridiculous. As my colleague

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2 Councilman Jones has reminded me,
3 "ri-Duck-ulous" that someone or some
4 group who were intent on blowing up the
5 courthouse would bring in a truckload or
6 trailer load of explosives, go out and
7 either commandeer a Duck, existing boat
8 buy an amphibious vehicle to make it look
9 like the Ducks, unload the explosives
10 from the truck or the tractor-trailer,
11 place that material, that explosive
12 material, in a amphibious vehicle to pull
13 up alongside or across the street from a
14 federal courthouse for the purpose of
15 blowing it up; when, in fact, all they
16 need to do is take that same tractor-
17 trailer down Sixth Street and pull the
18 switch.

19 And, again, I don't want to
20 bore my colleagues; I know we're all
21 busy, we're getting close to the end of
22 session.

23 But this is a matter going from
24 not only federal Judge Savage to the Park
25 Service, to Homeland Security, to the

1 6/9/10 STREETS & SERVICES - RES. 100451
2 Interior Secretary, to Congressman Brady,
3 to other federal judges, to the Mayor.
4 And I'm sure I'm leaving a few other
5 people out.

6 It's been going on for three
7 years, and I wanted to have a public
8 hearing to get to the heart of what this
9 request is.

10 More recently, Cindy McCloud,
11 who is the Superintendent of the Park
12 Service, was basically given a directive
13 by the U.S. Marshal not to renew the
14 customer utilization authorization, which
15 allows for the staging area, the queuing
16 area, if you will, for the customers to
17 use the sidewalk at Sixth Street to board
18 these amphibious vehicles.

19 I think I gave pretty much of a
20 pretty accurate overview. I will ask
21 Mr. Abernathy to come up. And since he
22 was the guy who was on the ground, if you
23 will, when he was my legislative
24 assistant, working with all of the city
25 and federal and state agencies to create

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2 the plan, the pattern that we have that
3 is in and around the mall area today.
4 What we see out there now is all a result
5 of that have legislation.

6 So Mr. Abernathy, if you'll
7 identify yourself for the record, please,
8 and just give us a broad overview and
9 fill in the blanks, if you will, of what
10 I may have left out.

11 (Witness comes forward.)

12 MR. ABERNATHY: Thank you. And
13 good afternoon, Councilman DiCicco and
14 members of the committee. My name is
15 Brian Abernathy, and I'm here to testify
16 on Resolution 100451.

17 I'm here as Councilman
18 DiCicco's former staff member in order to
19 provide some historical context to this
20 issue.

21 The Councilman had requested
22 that I attend, and my testimony does not
23 reflect the position of the Nutter
24 Administration.

25 Within two months of joining

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2 Councilman DiCicco's office in 2004, I
3 was asked to join a working group to deal
4 with various tour bus concerns. This
5 group was chaired by the Managing
6 Director's Office and included the
7 Streets Department, the Police
8 Department, the Parking Authority, the
9 National Park Service, the Constitution
10 Center, the Independence Visitors Center,
11 the Greater Philadelphia Tourism and
12 Marketing Corporation, former Senator
13 Fumo's office, former Representative
14 Lederer's office, the Old City District,
15 the Old City Civic Association, Tops
16 (which is a national coalition of tour
17 operator) and each local tour operator.

18 Some of this group's concerns
19 involved the advent of the Constitution
20 Center, the Independence Visitors Center,
21 and the increase in organized tour groups
22 such as schools and out-of-town bus
23 groups.

24 However, it became apparent
25 that local tour operators' business

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2 practices were a significant concern for
3 the group and the neighboring businesses.

4 At the time, four operators
5 were working independently around the
6 mall: the Trolley Work, Ride the Ducks,
7 The Big Bus Company, and Super Ducks. At
8 one point, the Trolley Works also began a
9 third amphibious tour, the Land Sharks.

10 Each company operated with ad
11 hoc loading zones, and few rules existed
12 to regulate the companies. Local
13 businesses complained about lines of
14 tourists blocking their entrance, some
15 vehicles remained parked on the street
16 24/7, tourists complained about
17 aggressive solicitations, and some safety
18 concerns were raised.

19 With plans in the works for the
20 Liberty Bell Pavilion and the National
21 Museum of American and Jewish History,
22 the situation was expected to get worse.

23 Councilman DiCicco, with the
24 support of the Managing Director, set out
25 to regulate the industry and organize the

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2 tour vehicles' configuration. A number
3 of factors went into this effort.

4 Our primary goal was to
5 eliminate all motorized tour vehicles
6 south of Market Street. Because of the
7 congestion that already existed in the
8 area, the location of horse carriages,
9 and the historical importance of both the
10 Liberty Bell and Independence Hall, most
11 felt that it was inappropriate to stage
12 tours in this area.

13 Traffic volume on Market Street
14 eliminated both sides of Market as an
15 option. Entrances and exits for the PPA
16 garage beneath the Visitors Center needed
17 appropriate clearances and limited the
18 area for safe staging.

19 Finally, areas adjacent to the
20 Quaker Meeting House, the Christ Church
21 burial ground, and Mikveh Israel, all
22 located on Fifth Street between Market
23 and Arch Streets, were not considered for
24 historical or cultural considerations.

25 After nearly two years of

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2 debate and discussion, the current
3 configuration was decided. This layout,
4 along with licenses, permits, and safety
5 requirements were all embodied in Bill
6 No. 050862-A, passed by Council in
7 December of 2005 and signed into law by
8 Mayor Street in January of 2006.

9 In addition to the licenses and
10 permits required by the City, operators
11 adjacent to the land operated by the
12 National Park Service must also receive
13 an NPS permit. Until recently, and to my
14 knowledge, but for initial concerns with
15 an operator that no longer exists, there
16 have been no problems obtaining those
17 permits and no violations of the
18 conditions of those permits.

19 Business terms were also agreed
20 upon by the operators and the
21 Independence Visitors Center for the sale
22 of tickets; I do not have specific
23 knowledge of the terms of those
24 agreements.

25 In conclusion, while the

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2 current law and parking arrangement has
3 not been without its critics or without
4 its problems, today's tourist experience
5 around the mall has improved over what it
6 was five years ago.

7 Operators are safe,
8 well-trained, and professional. The mall
9 is orderly, and the surrounding
10 businesses and institutions are not
11 negatively impacted. The operators
12 themselves have been more successful than
13 they initially suspected.

14 Working with each stakeholder,
15 we were able to balance a number of needs
16 that protected an important industry,
17 while improving the fabric of historic
18 Philadelphia.

19 This concludes my testimony,
20 and I'm happy to answer your questions.

21 COUNCILMAN DiCICCO: Thank you,
22 Mr. Abernathy, for your testimony and
23 filling in some of the blanks. I know I
24 left out a number of people who were also
25 involved in the crafting or drafting of

1 6/9/10 STREETS & SERVICES - RES. 100451

2 the original legislation. Thank you.

3 The next witness?

4 While Mr. McGonagle is going to
5 call up the next witness, I do want to
6 bring to the attention of my colleagues,
7 in your packets, you will see some
8 correspondence that has been going back
9 and forth either between my office and
10 the Park Service and others who are
11 involved in this going back at least
12 until August of last year.

13 But I would like to bring your
14 attention to the more recent letter that
15 was sent to -- just give me a second; I
16 have more letters here than I'd like to
17 have.

18 That was sent to Cynthia
19 McCloud, Superintendent of the
20 Independence National Historical Park
21 Service from federal judge Theodore
22 McKee, in which he references that
23 there's been apparently some growing
24 support on behalf of the Administration
25 and others.

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2 And I'll be more specific. In
3 his letter, you'll see in the second
4 paragraph, after he thanks Miss McCloud
5 for acknowledging his letter, he says
6 since the time that he and Judge Savage
7 and others have met with the
8 Administration that Congressman Brady has
9 expressed his strong feeling that the
10 current CUAs should not be renewed. And
11 himself, former Chief Judge Sirica, Chief
12 Judge Bartle could not agree more.

13 And then he claimed -- in his
14 letter, he says that he informed the
15 Mayor's chief of staff directly that the
16 CUAs would not be removed when they
17 expire in July.

18 But I just wanted, for the
19 record, to clarify what I think is a
20 misrepresentation of Congressman's
21 Brady's expression of strong feelings
22 about not renewing the CUA. Congressman
23 Brady -- I have a copy of a letter that
24 Congressman Brady sent to the Secretary
25 of the Interior Salazar back in January

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2 7, 2010.

3 He says, "I'm writing to make
4 you aware of an unresolved parking and
5 possible security situation in my
6 Congressional district. The sidewalk in
7 question is controlled by the National
8 Park Service, a division within the
9 Department of the Interior.

10 "A federal judge, Timothy
11 Savage, has notified me that there is an
12 ongoing dispute involving the tourist
13 business Ride the Ducks, amphibious
14 vehicles being able to park adjacent to
15 the federal courthouse on Sixth Street in
16 Philadelphia.

17 "Judge Savage states that the
18 U.S. Marshal made them aware of at least
19 one instance of a possible security
20 threat being somehow linked to one of the
21 Ducks' vehicles. He hopes that because
22 the area is a popular and historic
23 tourist attraction, the local vendors
24 oppose parking the Ducks and vehicles in
25 an alternative location.

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2 "Consequentially, I ask that
3 you please look into this matter and
4 determine whether the permit issued for
5 this use on Sixth Street is an
6 appropriate one."

7 I seem to think that's a far
8 cry from strong feelings about not
9 renewing the CUAs.

10 And also, in this letter, he
11 also says that he has met with John
12 Estee, who's the Chair of the Visitors
13 Center Board, and he has shared with
14 Mr. Estee a copy of the blast study that
15 had been conducted with him. And that he
16 understood our position -- he, meaning
17 Estee -- understood the judge's position
18 and seeing the -- reconciled to the CUAs,
19 not being renewed. He also offers his
20 assistance moving forward if problems
21 persist.

22 I spoke to Mr. Estee about noon
23 today. He said that is not how his
24 conversation went. It's basically a
25 mischaracterization. He said that he

1 6/9/10 STREETS & SERVICES - RES. 100451
2 thought there were serious problems, that
3 we should at least have a discussion on
4 it.

5 So I just wanted to point that
6 out for the record.

7 Next witness, please?

8 THE CLERK: The next witness
9 will be Jim Corrado.

10 COUNCILMAN DiCICCO: As
11 Mr. Corrado's approaching, as I said to
12 my colleagues, there are numerous letters
13 that have been going back and forth from
14 various judges, Secretary Janet
15 Napolitano who's in the Department of
16 Homeland Security, and others involved
17 with either Homeland Security or the U.S.
18 Marshal's Office since at least August of
19 2009.

20 Thank you.

21 (Witness comes forward.)

22 COUNCILMAN DiCICCO:

23 Mr. Corrado?

24 MR. CORRADO: Thank you,
25 Mr. Chair. Good afternoon, Mr. Chairman

1 6/9/10 STREETS & SERVICES - RES. 100451
2 and members of the Streets and Services
3 Committee. My name is James Corrado, and
4 I am President and CEO of the
5 Independence Visitor Center Corporation.
6 The Visitors Center Corporation operates
7 and manages the Independence Visitors
8 Center at Sixth and Market Streets.

9 Our mission is to serve as a
10 gateway, the first stop, for visitors to
11 the Greater Philadelphia region. We
12 provide information, brochures,
13 personalized trip planning by the
14 region's best concierge staff, snacks and
15 beverages, and Philadelphia's premier
16 gift shop.

17 Since opening in 2001, over 17
18 million visitors have passed through our
19 doors. We are the number one most
20 visited venue in the region, attracting
21 over 2.7 million people in 2009.

22 I am here today to comment on
23 the presence of the amphibious tour
24 vehicles, known as "The Ducks," at their
25 Sixth Street boarding directly alongside

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2 our building.

3 Since their inception in
4 Philadelphia, in 2006, Ride the Ducks has
5 been one of Philadelphia's top tourist
6 attractions. There are literally
7 thousands of families who happily take
8 the Duck tour each year to see our great
9 city and splash into the Delaware River.

10 We are inundated with requests
11 from people who come to the Visitors
12 Center, asking about Ride the Ducks. It
13 is the epitome of the much-used term
14 "family-friendly."

15 As you know, the current
16 loading situation was the result of
17 persistent and diligent work by the
18 parties that you identified in your
19 opening statement, Mr. Chairman, and that
20 Mr. Abernathy touched on as well.

21 This situation works perfectly.
22 In your opening remarks and in
23 Mr. Abernathy 's statement, he -- both
24 you and he alluded to the fact that the
25 system works very well.

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2 I would take it a step further
3 and tell you that I am hard-pressed to
4 think of a better way that all of these
5 different interests could be served, and
6 I include in those interests all of the
7 visitors that we get in the Philadelphia
8 area. You, Mr. Chair, the other parties
9 involved, and Mr. Abernathy did an
10 outstanding job. Our visitors find it
11 convenient, and the ease of boarding has
12 helped to make the Ducks one of our most
13 popular attractions.

14 Any effort to relocate the
15 Ducks to another location is nothing
16 short of a slap in the face to the
17 hospitality and tourism industry in the
18 City. So despite the National Park
19 Service's very unfortunate decision to
20 terminate the commercial-use
21 authorization for Ride the Ducks, I am
22 hopeful that they can and will continue
23 to operate in their current location.

24 Reviewing the previous two
25 years-plus efforts of the federal courts

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2 to eliminate the Ducks from Sixth Street,
3 and being very sensitive to the safety
4 and security needs of the visiting public
5 and our employees, I have concluded that
6 there exists no merit in terms of
7 security-enhancement benefits to the
8 removal of these vehicles.

9 The fact that two prior
10 security assessments -- one by The
11 Department of Homeland Security and
12 another by the Philadelphia Police
13 Homeland Security Office of Domestic
14 Preparedness -- failed to include the
15 Ducks carries great weight in reaching
16 this conclusion.

17 In surveying the positions and
18 opinions from dozens of my fellow
19 stakeholders in the hospitality and
20 tourism industry, I know that I am not
21 alone in this position. In fact, quite
22 the contrary. There is a feeling of
23 outrage from my colleagues that this
24 issue has once again surfaced in the face
25 of many prior meetings, discussions, and

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2 agreements made to assuage the security
3 concerns of those within the federal
4 courthouse.

5 It has been suggested that the
6 Ducks should relocate to Fifth Street for
7 boarding and unloading. It is this
8 scenario that truly presents a dangerous
9 situation. With the left-turn traffic
10 off of Market Street and traffic going to
11 the Benjamin Franklin Bridge adding to
12 the vehicular traffic flow, families with
13 children would be forced to board on a
14 much more heavily traveled and
15 potentially dangerous street. This
16 doesn't take into account the added
17 inconvenience to our visitors

18 In short, this solution makes
19 no sense.

20 Again, I would reiterate, the
21 current situation was developed carefully
22 and thoughtfully, and it is working
23 perfectly.

24 I strongly encourage you,
25 Mr. Chairman, and the members of Council

1 6/9/10 STREETS & SERVICES - RES. 100451
2 to support us in keeping Ride the Ducks
3 viable by maintaining the status quo.

4 Thank you.

5 COUNCILMAN DiCICCO: Thank you,
6 Mr. Corrado.

7 Councilman Greenlee.

8 COUNCILMAN GREENLEE: Thank
9 you, Mr. Chairman.

10 Mr. Corrado, the Chairman may
11 have said this and I may have missed it.
12 Has The Department of Homeland Security
13 ever raised any concerns about this, to
14 the best of your knowledge?

15 MR. CORRADO: We have a copy of
16 a study that they did that did not raise
17 that as a security issue.

18 I have been in my present
19 position, Councilman, for about eight
20 months, so I can't speak with firsthand
21 knowledge to any meetings that occurred
22 prior to my coming on.

23 But we do have a copy of a
24 study that was done by Homeland Security
25 that does not raise the Ducks as an

1 6/9/10 STREETS & SERVICES - RES. 100451
2 issue.

3 COUNCILMAN GREENLEE: And that
4 was how long ago? I'm sorry.

5 MR. CORRADO: In 2007,
6 Councilman.

7 COUNCILMAN DiCICCO: Mr. Friel,
8 will you be testifying? Could you answer
9 that question for the record? Are you
10 familiar with the question that was asked
11 on the Homeland Security? Actually, I
12 knew you were, but I need to ask that.

13 (Witness comes forward.)

14 COUNCILMAN DiCICCO: So if you
15 could identify yourself for the record
16 and maybe you can answer Councilman
17 Greenlee's question.

18 MR. FRIEL: My name is Francis
19 Friel. I'm the Director of Security at
20 the Independence Visitors Center
21 Corporation.

22 And going back into 2007, as
23 part of my security responsibilities, I
24 went the first to the Philadelphia Police
25 Department and asked them to perform an

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2 objective overall study of the risk
3 assessment inherent in the Independence
4 Visitors Center. And as a result of an
5 exhaustive security assessment, they did
6 not mention the Ducks at all as part of a
7 security threat.

8 And as part of the larger law
9 enforcement community, I had the pleasure
10 of meeting the coordinator of the
11 Department of Homeland Security, the
12 federal Homeland Security, William Ryan,
13 and also his colleague John Guest, and
14 they also suggest that a wider security
15 assessment of the entire historical park
16 in regard to specific dangers that we may
17 face to include any terrorist attack.

18 At the conclusion of that
19 assessment by the Department of Homeland
20 Security, there was no mention of the
21 Ducks being a specific threat to any
22 portion of the Independence National
23 Historical Park.

24 COUNCILMAN GREENLEE: Thank
25 you.

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2 COUNCILMAN DiCICCO: Now, while
3 you're up there, Mr. Friel, in that
4 report, I think it talked about blast
5 zones; it was more specific in general.
6 Is that an accurate --

7 MR. FRIEL: There was no
8 specific reference to blast zones.

9 There was a prior report that
10 was submitted to the federal courthouse
11 that Judge Savage shared with us in
12 regard to blast zone distances and
13 certain weights of proposed bombs.

14 They did mention that a
15 4,000-pound blast zone would be about
16 1400 feet, completely surrounding the
17 federal courthouse.

18 And in the context of that
19 proposal, there was a request by the
20 agency who committed the assessment to
21 sell to the federal courthouse protective
22 shield glass that would reduce the blast
23 zone to 750 feet.

24 But even at 750 feet, it would
25 take a blast zone all the way down to the

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2 east side of Fifth Street, below Vine and
3 south of Chestnut Streets, so it's quite
4 a rather large-encompassing blast zone.

5 COUNCILMAN DiCICCO: Again,
6 while you're here, I want to take
7 advantage of the opportunity and ask you
8 some questions as it relates to the
9 Visitors Center.

10 And as was testified by
11 Mr. Abernathy, a lot of this had to do
12 with obviously the safety issues and
13 organizing a much more safe environment
14 for people to operate and enjoy all of
15 the tourist attractions in the mall area.

16 There was -- and correct me if
17 I'm wrong. I believe there was also an
18 agreement that had been made between the
19 Ride the Ducks folks and the Visitors
20 Center as it relates to the sale of
21 tickets for patrons on Ride the Ducks, in
22 which a portion of that revenue on ticket
23 sales within the center go towards the
24 revenue stream to support the operation
25 of the Visitors Center.

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2 Could you speak to that a
3 little bit?

4 MR. FRIEL: That's correct. On
5 an annual basis, speaking specifically
6 for our last fiscal year, the
7 Independence Visitors Center enjoyed a
8 revenue stream of approximately \$70,000.

9 COUNCILMAN DiCICCO: Just by
10 way of sales on the --

11 MR. FRIEL: Just by way of
12 those specific sales for Ride the Ducks.

13 COUNCILMAN DiCICCO: And if
14 memory serves me right, the last time we
15 had a hearing on this a year or two ago
16 and there was some discussion about
17 relocating the Ducks to Fifth Street, in
18 addition to some of the logistical
19 problems that we expect we would
20 encounter based on Mr. Corrado's
21 testimony, we also believed that there
22 would be a significant fall-off of
23 revenue to the center itself; is that
24 correct?

25 MR. FRIEL: That was the

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2 conclusion based upon the experts'

3 recommendations; yes, sir.

4 COUNCILMAN DiCICCO: All right,

5 'cause I'm going to ask some of the folks

6 from the Ducks to come up as well.

7 MR. FRIEL: They're present.

8 COUNCILMAN DiCICCO: Are there

9 any more questions?

10 I thank both of you for coming.

11 Mr. Friel, do you have anything

12 to add at this moment?

13 MR. FRIEL: No.

14 COUNCILMAN DiCICCO: Okay.

15 I'll ask representatives for Ride the

16 Ducks -- I know you don't have any

17 prepared testimony, but I'd just like to

18 get some stuff on the record.

19 (Witnesses come forward.)

20 COUNCILMAN DiCICCO: Good

21 afternoon, gentlemen. I want to ask you

22 just some questions so we can establish a

23 record here.

24 A number of employees that work

25 currently for Ride the Ducks -- and

1 6/9/10 STREETS & SERVICES - RES. 100451
2 identify yourself for the record, please.

3 MR. BLUMENTHAL: Good
4 afternoon, Chairman. My name is Greg
5 Blumenthal, General Manager for Ride the
6 Ducks.

7 Our employee number currently
8 is 51.

9 COUNCILMAN DiCICCO: Do you
10 have any information you can share with
11 us on the amount of taxes and/or wages
12 that your employees contribute to the
13 City of Philadelphia wage taxes, sales
14 taxes, other things like that?

15 MR. BLUMENTHAL: Over the last
16 four years, in excess of -- in the range
17 of roughly \$150,000.

18 COUNCILMAN DiCICCO: In wage
19 taxes, sales taxes combined?

20 MR. BLUMENTHAL: That's
21 correct, yes.

22 COUNCILMAN DiCICCO: All right.
23 How many tourists use your -- how many
24 people ride on the Ducks, generally?

25 MR. BLUMENTHAL: 200,000 and

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2 onward, yes.

3 COUNCILMAN DiCICCO: All right.

4 You heard my question to Mr. Friel.

5 Remember, again, if memory serves me

6 right, I should say, at the time that the

7 current staging areas were enacted, there

8 was a concern, I believe, on Ride the

9 Ducks, that sharing some of that revenue

10 may have a negative impact on your

11 business model.

12 And if memory serves me right,

13 I think you guys were maybe actually

14 looking to go to another location that

15 may not have required you to make any of

16 those -- that sharing of revenue.

17 Since that time, I'd just like

18 a brief summary, a sentence or two. Is

19 it working? Do you think it's working?

20 Does it make sense to stay there? And

21 has it had any negative impact on your

22 business model?

23 MR. HERSCEND: Good afternoon.

24 My name is Chris Herschend, President of

25 Ride the Ducks.

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2 I remember testifying before
3 this committee on the subject of
4 relocation in 2005, and we did have some
5 concern about the disruption. Any change
6 to a businessperson is always sort of
7 concerning.

8 We've been thrilled with the
9 situation, the stability primarily, but
10 also the quality of being associated with
11 the Independence Visitors Center has been
12 outstanding for our business. Just the
13 facilities themselves, in addition to the
14 location.

15 COUNCILMAN DiCICCO: Could
16 either of you just give us a little brief
17 overview of issues that your company
18 takes in regards to security, general
19 security, not specific to terrorists
20 utilizing one of your vehicles generally,
21 'cause we did have some meetings, and my
22 colleagues, obviously, were not at those
23 meetings we had at Paul Levy's office and
24 in Judge Savage's chambers when the issue
25 of security came.

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2 So up could you, just for the
3 record, give us a little overview of what
4 your procedures are?

5 MR. BLUMENTHAL: Yeah, I can
6 speak directly to -- safety is priority
7 number one for our business.

8 There are few things we start
9 with on a personnel level. All -- every
10 employee new hire, rehire is background-
11 checked and also to meet the federal
12 regulation under Coast Guard law. The
13 CFR I don't recall. But all of our
14 employees that are Coast Guard-certified
15 carry a (indiscernible) card, which is
16 issued by the TSA.

17 In addition to that, once we
18 then go back -- on an operational level,
19 every single day, our vehicles are signed
20 off on by the licensed drivers twice a
21 day and a mechanic that are all empowered
22 to pull a vehicle down if there's
23 anything wrong with it. So they're
24 extensively looked at. They're crawled
25 in, under, on, and around three times a

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2 day by trained personnel.

3 Does that satisfy your
4 question, sir?

5 COUNCILMAN DiCICCO: Yeah. I
6 guess what I was getting at is, I think
7 at one of those meetings, I may have
8 raised the issue about, is there any
9 interaction between your business and the
10 security personnel in the federal
11 courthouse? Did we not have that
12 discussion at that time? I thought we
13 did.

14 MR. HERSCEND: I recall
15 discussing different alternatives for
16 ways to address any security concerns and
17 the possibility of security assessments
18 made by their personnel or Independent or
19 the City or the IVC was raised, and I
20 recall sharing then, before, and since
21 that we're more than willing to look at
22 any -- any -- we're not security experts
23 so I wouldn't presume to know precisely
24 what the methodology would be.

25 But any reasonable way to

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2 assuage concerns about the vehicles
3 themselves, I think there are a number of
4 actions that can be taken. And we've
5 consistently said we're open to that.

6 COUNCILMAN DiCICCO: I'll get
7 back to that.

8 Tell me about your vehicles,
9 where they're stored overnight, how
10 they're stored, is there security there
11 types of things you do.

12 MR. BLUMENTHAL: Yeah. All 15
13 vehicles are stored in gated lot at 1390
14 Schuylkill Avenue, which is also the
15 facility that holds the Big Bus and
16 Trolley Works vehicles, which are of
17 similar size.

18 There is security -- there are
19 security cameras there. And a
20 significant number of our vehicles are
21 actually stored in the building, which
22 gets locked at night.

23 COUNCILMAN DiCICCO: So in the
24 morning, when you open up for business at
25 your garage facility, warehouse facility,

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2 walk me through briefly what the steps
3 are from that time with the inspection of
4 the vehicle, obviously; operators, what
5 they do, what's their route; and how do
6 you monitor to make sure that no one is
7 sneaking in another amphibious vehicle
8 with explosives.

9 MR. BLUMENTHAL: All of our
10 vehicles are identifiable by their
11 Fishing Boat Commission-issued numbers,
12 which are on the bough of the boat, in
13 addition to all the life jackets are as
14 well labeled by the Duck number. And the
15 Duck is itself labeled by the Duck
16 number. There's also license plates
17 issued by the DOT -- or I mean PennDOT.

18 And from that point, the
19 employee, the licensed employee, will use
20 the pre-trip inspection form that's
21 required prior to taking a vehicle out,
22 which requires them to lift the
23 floorboards of the vehicle, inspect the
24 specific components in there that are in
25 that area underneath the floorboards to

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2 make sure that they're working
3 appropriately.

4 And these are things that
5 pertain to hull integrity and, therefore,
6 the safety of the guests and the
7 employees.

8 They also must go underneath
9 the vehicle with a creeper and inspect
10 several areas again regarding hull
11 integrity and the vehicle integrity both
12 from a land-based vehicle in addition to
13 it being a boat.

14 At that point in time -- again,
15 just to reiterate -- if there's anything
16 found out of the ordinary or some system
17 is not working appropriately, all of the
18 alarms, sensors and so one, they have the
19 right to not to take that boat out. And
20 we work diligently for that not to
21 happen, but they have the right to do
22 that.

23 So that occurs. It gets turned
24 in. If they have any issues at all, we
25 put them on a different vehicle, or we

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2 fix the issue at hand and they go back
3 out.

4 Now, what they do then is, they
5 will drive directly from our 1390
6 location on the Vine Street Expressway
7 and go to Sixth Street where our
8 approved -- to what our operating zone is
9 and our route, at the east side of Sixth
10 Street.

11 COUNCILMAN DiCICCO: So your
12 employee, or the personnel, that you have
13 at the staging area on Sixth Street,
14 they're familiar with the driver or
15 drivers? They would know if it was
16 someone who was not the authorized driver
17 of that vehicle?

18 MR. BLUMENTHAL: That is
19 correct.

20 In fact, last year we had a 92
21 percent return rate; and this year, we
22 have a hundred percent return rate. We
23 did not hire a single personnel. Many of
24 our staff tenure of six and seven years;
25 specifically the captains that drive the

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2 boats.

3 COUNCILMAN DiCICCO: I want to
4 go back to my questions on the security
5 'cause I'm just kind of trying to
6 remember these things from the various
7 discussions we've had.

8 And I think I was the one who
9 raised the question to Judge Savage at
10 the meeting we had at the Center City
11 Service District, who, when he came in,
12 the judge came in with some security
13 guard personnel along with the canine
14 dogs.

15 MR. HERSCEND: Mm-hmm.

16 COUNCILMAN DiCICCO: And I
17 think I had asked that, would it be
18 feasible, both on the part of the Ducks
19 and the security personnel from the
20 federal courthouse, that the security
21 guys would walk over periodically to the
22 vehicles. And they're trained to sniff
23 out explosives; would that pose a
24 problem?

25 And correct me if I'm wrong but

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2 I don't think you guys saw any problem
3 with that?

4 MR. HERSCEND: In concept,
5 there's absolutely no problem with it
6 whatsoever. The risk is -- in any
7 process, there's business interruption or
8 the reasonableness of the inspecting
9 party. So presuming that could be worked
10 out, which I have every reason to believe
11 it would be, it would be no problem at
12 all.

13 COUNCILMAN DiCICCO: You would
14 be amenable to that? Okay.

15 MR. HERSCEND: Of course.

16 COUNCILMAN DiCICCO: I'm
17 starting to run out of questions,
18 actually, unless we set up some sort of
19 monitor for every vehicle that travels
20 south on Sixth Street and check every one
21 of them out, I don't see how else we can
22 do anything more than you've already been
23 doing, and will continue to do.

24 Any other questions?

25 (No further questions.)

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2 COUNCILMAN DiCICCO: Thank you.

3 MR. HERSCEND: Thank you,
4 Councilman.

5 COUNCILMAN DiCICCO: Is there
6 anyone else here who wishes to testify on
7 this matter?

8 THE CLERK: Mr. John Barry.

9 COUNCILMAN DiCICCO: Is there
10 anyone here from the federal courts,
11 Homeland Security, federal marshals who
12 wish to have?

13 (No response.)

14 COUNCILMAN DiCICCO: No?

15 (Witness comes forward.)

16 MR. BARRY: I have copies if
17 you'd like them.

18 COUNCILMAN DiCICCO: Yes,
19 please.

20 MR. BARRY: Good afternoon,
21 Honorable Councilmen and Councilwomen. I
22 am Jonathan Barry, President of the
23 Constitutional Walking Tour of
24 Philadelphia.

25 I want to thank Councilman

1 6/9/10 STREETS & SERVICES - RES. 100451
2 Frank DiCicco for his public service. I
3 also want to thank all of the members of
4 City Council's Committee on Streets and
5 Services for giving me the opportunity to
6 testify before you today.

7 This summer marks the fifth
8 summer whereby tour passenger loading
9 zones around the Independence Visitor
10 Center have been governed by Section 1,
11 Title 9, Chapter 9-400, Carriers, of the
12 Philadelphia Code, Regulation of
13 Businesses, Trades, and professions, as
14 amended on January 24, 2006.

15 As such, this presents a
16 valuable opportunity to evaluate the
17 present conditions and impact of the tour
18 passenger loading zones in historic
19 Philadelphia.

20 Today, there are six tour
21 passenger loading zones in the area
22 around the Independence Visitors Center
23 at Sixth and Market Street bounded on the
24 west by the west curblane Sixth Street;
25 on the north by the south curblane of

1 6/9/10 STREETS & SERVICES - RES. 100451
2 Arch; on the east by the east curbline of
3 Fifth; and on the south by the north
4 curbline of Market.

5 Of the six tour passenger
6 loading zones, Ride the Ducks owns four
7 of the six tour passenger loading zones
8 under the names Ride the Ducks, Philly
9 Ducks, Penn Ducks, River Ducks. Ride the
10 Ducks, Penn Ducks, and Philly Ducks
11 currently operate on Sixth Street, and
12 River Ducks operates on Fifth Street.

13 The remaining two tour
14 passenger loading zones are owned by 76
15 Carriage Company, doing business as
16 Philadelphia Trolley Works and the Big
17 Bus Company.

18 For all intents and purposes,
19 two companies monopolize the six tour
20 passenger loading zones around the
21 Independence Visitors Center for their
22 motorized tours.

23 When the tour passenger loading
24 zones were being developed, Richard
25 Dixon, with the Philadelphia Parking

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2 Authority, wrote to Charles Trainer III,
3 Chief Traffic Engineer at the Streets
4 Department and foreshadowed certain
5 issues with the legislation: "It seems
6 we now have almost the entire mall
7 divided up for the exclusive use of
8 private business."

9 Today, for example, as a result
10 of the policies in place, there is not
11 even one passenger vehicle loading zone
12 anywhere around the Independence Visitors
13 Center, which is bounded by Market and
14 Arch and Fifth and Sixth.

15 Specifically in approximately
16 the fall of 2007, the last remaining
17 passenger vehicle loading zone outside of
18 the Independence Visitors Center was
19 given to Ride the Ducks for it to use as
20 a tour passenger loading zone.

21 For example, as a father, I
22 would not be able to drop off my wife and
23 daughter anywhere adjacent to the
24 Independence Visitors Center. The
25 closest legal and safe passenger vehicle

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2 loading zone is on the west side of Sixth
3 Street between Market and Chestnut, in
4 front of Dow Chemical. That makes for
5 placing the interests of a private
6 business over providing a positive and
7 safe visitor experience.

8 Additionally, during peak
9 season, from April through October, Ride
10 the Ducks operations on the east side of
11 Sixth Street between Market and Arch
12 consistently block the public
13 right-of-way on the sidewalk and also
14 block the Sixth Street side entrance to
15 the Independence Visitors Center where
16 Penn Ducks tour passenger loading zone is
17 directly located in front of that
18 entrance.

19 On any given day, the
20 right-of-way is obstructed by so many
21 Ride the Ducks customers, tour staff,
22 photography concessions, and supplies; as
23 such, it makes it practically impossible
24 for pedestrians to safely walk on the
25 Sixth Street sidewalk.

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2 Ride the Ducks has,
3 unfortunately, violated many City codes
4 and regulations pertaining to parking and
5 no-parking areas, parking unauthorized
6 vehicles in its tour passenger loading
7 zone, causing traffic congestion, idling
8 next to the Liberty Bell and Independence
9 Hall at the corner of Sixth and Chestnut
10 Streets, blocking the right-of-way, et
11 cetera.

12 Also, in peak season,
13 Philadelphia Trolley Works regularly uses
14 the front of the Bourse Building as a
15 tour passenger loading zone. In fact,
16 Trolley Works markets itself "A Haunted
17 Trolley Tour" that departs from in front
18 of the Bourse.

19 On July 2, 2008, when Brian
20 Abernathy, from Councilman DiCicco's
21 office, was informed about Trolley Works
22 new tour passenger loading zone in front
23 of the Bourse, Mr. Abernathy wrote: "It
24 does violate the code, and I've reported
25 it appropriately.

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2 While we appreciated that,
3 unfortunately, for the last several
4 years, we have reported various
5 problems -- see Exhibit A attached
6 hereto -- to the City of Philadelphia,
7 including to the Mayor, the Office of the
8 Managing Director, the Streets
9 Department, and City Council.

10 Unfortunately, the problem have
11 persisted in; and, in fact, persist today
12 in spite of numerous written follow-ups
13 to the City of Philadelphia regarding
14 enforcement of various provisions the
15 Philadelphia Code governing tour
16 passenger loading zones.

17 For the reasons outlined
18 herein, I support moving all of Ride the
19 Ducks tour passenger loading zones from
20 Sixth Street; and moreover, I
21 respectfully request an independent
22 evaluation and review of the tour
23 passenger loading zones to ensure the
24 full and complete compliance of the
25 permit and license holders with the

1 6/9/10 STREETS & SERVICES - RES. 100451
2 Philadelphia Code.

3 I thank you for your time and
4 consideration.

5 COUNCILMAN DiCICCO: Thank you,
6 Mr. Barry, for your testimony.

7 I will take a little bit more
8 time to review what your concerns are and
9 get back to you --

10 MR. BARRY: Fair enough.

11 COUNCILMAN DiCICCO: -- in very
12 short order. Thank you.

13 MR. BARRY: Thank you.

14 COUNCILMAN DiCICCO: Is there
15 anyone else here who wishes to testify
16 for? in favor?

17 Councilman Greenlee.

18 COUNCILMAN GREENLEE: Yeah.

19 Thank you, Mr. Chairman.

20 I was just wondering if anybody
21 could address -- I know in the packet
22 that was given out, there was some
23 reference to a United States Marshal
24 Service survey, a security survey. Does
25 anybody know -- would anybody know

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2 anything about that?

3 COUNCILMAN DiCICCO: No. Maybe

4 I'll just read the letter that was sent

5 to Dennis Reddenbach, who's the Northeast

6 Regional Director for the Park Service.

7 He was the superintendent of our National

8 Park Service here. It's dated May 10th.

9 It says:

10 "Dennis, as you are aware, the

11 U.S. Marshal Service has recently

12 conducted a security assessment of the

13 federal courthouse complex. The results

14 of our security assessment have been

15 shared with the United States District

16 Court and the Third Circuit Court of

17 Appeals.

18 "Both chief justices and I

19 agree that when it comes to our perimeter

20 security, we have one main area of

21 concern. This concern is on our Sixth

22 Street perimeter. Without getting into

23 specifics here, our assessments give us

24 more concern for this side of our

25 facility than any other side, as we

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2 discussed in our face-to-face meeting.

3 "I ask that. On behalf of the
4 U.S. Marshal Services and the tenants of
5 the federal courthouse, you not renew the
6 commercial use authorization or permit
7 for the vendors that currently use your
8 Sixth Street sidewalk.

9 "The vehicles which service
10 your facility that must stop on Sixth
11 Street can be co-coordinated with my
12 office so that our security personnel can
13 be alert to these deliveries" -- meaning
14 people who deliver stuff to the center
15 but not related to the Ducks.

16 "We will coordinate with the
17 City of Philadelphia and the Parking
18 Authority as well to ask that they
19 enforce the no-parking status along this
20 block.

21 "I thank you for your
22 cooperation."

23 I really don't know what it
24 means, but I just read it into the record
25 because it was sent to Mr. Reddenbach.

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2 COUNCILMAN GREENLEE: Thank
3 you.

4 COUNCILMAN DiCICCO: There
5 being no further testimony, I thank you
6 all for taking the time to be here. I
7 thank my colleagues for bearing with us
8 again on this same matter.

9 And this concludes the public
10 hearing on the Committee of Streets and
11 Services, and I will recess to the call
12 of the Chair, if needed.

13 Thank you. thank you all.

14 There's a gentleman here who's
15 from the U.S. Marshals Office, correct?
16 He just informed me that there was a
17 letter that was submitted to, I believe,
18 the Chief Clerk's Office. I did not have
19 a copy of that; it was submitted
20 somewhere around 1:45 this afternoon.

21 So I actually have it in my
22 hand. This is the first time I'm getting
23 a chance to see it. I will make copies
24 available to all of you. So if you
25 either want to wait around or we'll send

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2 it to you. I don't know what's in it. I
3 haven't had a chance to read it, okay?

4 Thank you.

5 (Proceedings end at 3:08 p.m.)

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I HEREBY CERTIFY that the
proceedings of the City of Philadelphia
Council Committee on Streets and Services are
contained fully and accurately in the
stenographic notes taken by me on Wednesday,
June 9, 2010, and that this is a true and
correct statement of same.

JOSEPHINE CARDILLO
Registered Professional Reporter

(The foregoing certification of
this transcript does not apply to any
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under the direct control and/or supervision of
the certifying reporter.)

