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12 BILL 000674 - An ordinance amending Chapter 10-800
13 of the Philadelphia Code, entitled "Safety," by
14 prohibiting the inhalation of nitrous oxide for
15 nonmedical purposes and by prohibiting the
purchase, possession, sale, offering for sale or
other distribution of nitrous oxide for prohibited
purposes, all under certain terms and conditions.

16

17 PRESENT: COUNCILMAN ANGEL L. ORTIZ, Chair
COUNCILMAN DARRELL L. CLARKE
18 COUNCILMAN DAVID COHEN
COUNCILWOMAN DONNA REED MILLER
19 COUNCILWOMAN MARIAN B. TASCO
COUNCIL PRESIDENT ANNA C. VERNA
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1 4/18/01 PUBLIC SAFETY

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

3 COUNCILMAN ORTIZ: This meeting of the
4 City Council Committee on Public Safety is now in
5 order. Councilman Clarke is here, Councilwoman
6 Tasco, Councilwoman Verna -- President Verna,
7 Councilwoman Donna Miller, and Councilman Cohen.

8 The clerk, would you read, since we
9 have a quorum, could you read the title of the
10 ordinance, please.

11 THE CLERK: An ordinance amending
12 Chapter 10-800 of the Philadelphia Code, entitled
13 "Safety," by prohibiting the inhalation of
14 nitrous oxide for nonmedical purposes and by
15 prohibiting the purchase, possession, sale,
16 offering for sale or other distribution of nitrous
17 oxide for prohibited purposes, all under certain
18 terms and conditions.

19 COUNCILMAN ORTIZ: Thank you.

20 First of all, let me read a letter I
21 got, which I find greatly disturbing.

22 Commissioner Tsou, I'm sorry that I did
23 not answer, but when you called me the other day
24 to ask for postponement of the hearing, I said to
25 you that I had to consult the main sponsor of the

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2 legislation, but in the intervening time, I
3 received this letter. Now, it's disturbing to me
4 because it tries to set up a process for City
5 Council from the executive office, and we are two
6 separate departments of government.

7 I received this letter dated on the
8 17th, and it says:

9 "Dear Councilman Ortiz: Although the
10 prohibition of nitrous oxide is of high importance
11 to the Philadelphia Police Department,
12 regrettably, we are unable to respond directly to
13 your request for testimony on this matter. As you
14 are aware, all requests for Council testimony from
15 City agencies must be directed to and coordinated
16 through the Mayor's Office."

17 I did not know that. However -- that
18 is not our problem. However the executive wants
19 to organize itself, that's their problem. We just
20 know who we want to come here to testify.

21 "Please note that I will forward your
22 letter to the Mayor's office for consideration.
23 However, I would greatly appreciate it if you
24 would also officially resubmit this request to
25 Joyce Wilkerson. On behalf of Commissioner

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2 Timoney, I apologize for any delay or
3 inconvenience, and I appreciate your consideration
4 in this matter."

5 For 17 years, this Council has been
6 doing business, since I've been here, and longer
7 for President Verna and much longer for my
8 colleague here to my left, David Cohen, and I know
9 that Darrell and Donna, much less. But usually,
10 when a chairman of a committee holds a hearing on
11 legislation, an ordinance or resolution, we set
12 the date for that, Council sets the date according
13 to our schedule, according to our priorities,
14 according to how we see the pressing and the issue
15 that is upon us, and we send the letters out to
16 the people in the Administration that we think are
17 appropriate to come and testify.

18 It is up to those individuals in the
19 Administration to get permission from whoever they
20 have to get permission, if they need that. All
21 they have to understand is that we have a date set
22 for a hearing, and that date is not going to just
23 be postponed because we have to now acquiesce and
24 go through the administrative procedures set up by
25 the executive. That is not how this body has ever

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2 functioned under any president, under any chairman
3 of any committee.

4 I will continue to send to the
5 commissioners of departments the letters and the
6 requests for their appearance before this body.
7 If I have to begin putting into every ordinance
8 and every resolution that we pass for this
9 committee a demand for subpoena power, then we
10 will do that.

11 But the appearance before this body is
12 not optional when a committee requests that you be
13 here. It is not up to your disposition or the
14 disposition of the executive. We're willing to
15 sit down and talk, we're willing to sit down and
16 get together, but we are not willing to abdicate
17 our power and our authority.

18 So this letter to me was highly
19 insulting, Commissioner Sylvester Johnson. Like I
20 said, we just write the letters to the
21 commissioners. However you guys want to organize
22 yourself, that's up to you. But do not, do not
23 try to impose your timelines on the timelines of
24 City Council.

25 Thank you very much.

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2 Councilwoman Verna, do you have
3 anything to say?

4 COUNCIL PRESIDENT VERNA: Yes, I do.

5 I would just like the record to reflect
6 that on November 2, 2000, I introduced Bill No.
7 674 on this very important issue. It has come to
8 my attention that on December 20, 2000, Governor
9 Ridge in fact signed Senate Bill No. 1173, which
10 in part makes the sale and/or use of nitrous oxide
11 illegal.

12 So in lieu of the passage of this bill
13 and not to overlap with the State, what they have
14 already done, I would ask the Chair that Bill No.
15 674 be withdrawn. However, I would request that
16 we go forward with this hearing today in order to
17 see how the City is enforcing the existing State
18 legislation.

19 COUNCILMAN ORTIZ: Thank you, Madam
20 President.

21 Councilman Cohen.

22 COUNCILMAN COHEN: Appropos the remarks
23 by Councilman Ortiz, I just want to speak on
24 behalf of the Deputy Commissioner, Sylvester
25 Johnson, whom I'm known for most of my life and

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2 most of his life, since he's younger than I am,
3 that sometimes the person bringing the message or
4 producing it in writing gets blamed. Obviously,
5 it was not Commissioner Johnson who was the reason
6 for the letter being written.

7 What we want to make clear to the
8 Mayor, and I'm sure you will help convey it and
9 the record of this hearing will convey it, is that
10 it is not up to the executive to determine how the
11 legislative process works. That's the sole
12 function of the legislative body, and we have to
13 have the freedom to approach anyone in the
14 Administration at any time for information. And
15 it's very important that everybody in the
16 Administration knows it, and I suspect that the
17 procedure outlined in the letter, whoever arrived
18 at it, whether the Mayor approved it or somebody
19 else approved it, I'm sure they never intended it
20 to have the impact that it does have.

21 What we're seeking to do is to be an
22 independent body searching for the truth in all of
23 these matters that we must consider, and we have
24 an absolute legal right and we have a fundamental
25 duty to the people who elect us to be able to do

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2 it without any censorship. We have to have the
3 freedom to reach any official at any level in the
4 government, and if necessary, as the Chairman of
5 the committee said, Councilman Ortiz, we can
6 exercise our subpoena rights under the Home Rule
7 Charter to acquire that information, but we much
8 prefer to hold these hearings in a cooperative
9 frame of reference, because we think
10 fundamentally, the executive and the legislative
11 body have the same goals: to build a better city.

12 So we would just hope that our message
13 gets through. We -- I assume that it was just
14 through inadvertence, without anyone fully
15 appreciating how the letter sounded that it was
16 written that that procedure was set up. But
17 whatever procedure the executive does, as
18 Councilman Ortiz said, is the executive's business
19 to work out within the executive department, but
20 we cannot have any shackles on the method by which
21 the Council arrives at what the Council needs for
22 its information upon which to base its legislative
23 decisions.

24 But I'm sure -- I've known Commissioner
25 Johnson for so many years. He's always very

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2 courteous, always cooperative, and we find that
3 generally with respect to the Police Department,
4 and we're very pleased by that element. But what
5 we're dealing with is apparently a citywide
6 executive policy, not a policy of the Police
7 Department.

8 Thank you, Mr. Chairman, for allowing
9 me to express my opinions on it.

10 COUNCILMAN ORTIZ: Thank you,
11 Councilman Cohen.

12 We have testimony, which arrived
13 yesterday around 5 o'clock in my office. Usually,
14 I really would prefer testimony to come much
15 sooner than that. As the President is reminding
16 me, it's supposed to be at least 24 hours before.
17 We're going to submit that testimony into the
18 record.

19 We'd like to have this hearing revolve,
20 Commissioner Johnson, if you may, revolve around
21 implementation and how this ordinance that has
22 been approved is going to be implemented and
23 enforced. And if Commissioner Tsou and L&I have
24 anything to contribute in terms to that part and
25 phase of the issue, we would appreciate that.

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2 The President has withdrawn the
3 ordinance, but we still would like to use the time
4 to discuss, or at least for you to discuss with
5 us, the implementation of the State ordinance that
6 has been passed and so on.

7 COMMISSIONER JOHNSON: Councilman --

8 COUNCILMAN ORTIZ: Commissioner?

9 COMMISSIONER JOHNSON: I apologize,
10 'cause I'm really caught offguard here. I'm not
11 sure what's going on at this point. I came to a
12 hearing from the State Black Caucus over at the
13 room next door; I just happened to walk in here.

14 (Laughter.)

15 COMMISSIONER JOHNSON: I had a
16 10 o'clock hearing in front of them, so just by
17 walking in here, I heard my name, and they're
18 waiting for me to testify right across the hall.
19 I apologize and I'll try to find out exactly
20 what's going on, and I would never disrespect the
21 Council in any way, at any time.

22 COUNCILMAN ORTIZ: Oh, I understand
23 that, Commissioner. I did not mean that you have
24 ever done that. It -- it is just something that
25 is not your fault, or even Commissioner Timoney's

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2 fault.

3 But we'd like to be able to, if perhaps
4 the inspector that would do it, where is it that
5 we're going to go with this problem and how are we
6 going to enforce legislation now on the books in
7 terms of this so that we have some control over
8 it, be it at Vets Stadium, be it at the new
9 facilities that we're building? And I think
10 that's what the President's interested in and I
11 think that's what this committee's interested in
12 at this point in time.

13 COMMISSIONER JOHNSON: I think
14 Inspector Daley is prepared to testify, he's
15 always prepared to come wherever he goes.

16 COUNCILMAN ORTIZ: Okay.

17 COMMISSIONER JOHNSON: But at the same
18 time, I would like to go across to 401, and as
19 soon as I'm done testifying there, I will be right
20 back.

21 COUNCILMAN ORTIZ: President Verna?

22 COUNCIL PRESIDENT VERNA: Yes. As far
23 as I'm concerned, the deputy can leave.

24 COUNCILMAN ORTIZ: Yes.

25 COMMISSIONER JOHNSON: All right, thank

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2 you.

3 COUNCIL PRESIDENT Verna: Inspector
4 Daley, in your testimony, you indicate that under
5 the current law, it is not a crime to possess
6 nitrous oxide, but under State Bill 1173, it is a
7 misdemeanor to possess the substance. Why weren't
8 you aware of the change in the law?

9 INSPECTOR DALEY: I only became aware
10 of the change this morning, and since my testimony
11 was submitted, we did hear --

12 COUNCIL PRESIDENT Verna: I do have
13 copies.

14 INSPECTOR DALEY: -- Madam President,
15 that there was State legislative action pending.
16 I was not aware, however, that this law was
17 enacted. And as I understand from reading the
18 legislation and the legislative history today,
19 this only became effective a week ago. So we have
20 not been briefed on it to this point.

21 But one of the things that we will
22 ensure is done now, now that we have a copy of the
23 legislation in our hands and can go forward with
24 it, is that we'll communicate this --

25 COUNCIL PRESIDENT Verna: I think the

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2 Governor signed that in December.

3 What is the process in the Department
4 for enforcing new laws that are very much needed?

5 INSPECTOR DALEY: Well, as a --

6 COUNCIL PRESIDENT VERNA: What type of
7 education program is in place or will be in
8 place? And can you give us some idea as to how
9 the Department intends to enforce this piece of
10 legislation, namely Senate Bill 1173?

11 INSPECTOR DALEY: Yes, ma'am. As a
12 component of the annual municipal police officers
13 training program that each sworn officer in the
14 Commonwealth of Pennsylvania must undergo,
15 Philadelphia police officers receive a bloc of
16 instruction on legal updates. That program gives
17 an opportunity for all new legislations that are
18 enacted into the crimes code, traffic codes, and
19 other codes that the police are empowered to
20 enforce an opportunity to discuss the changes and
21 highlight the particulars of the legislation and
22 how it will be useful for police officers in
23 conducting their duties.

24 Prior to this enactment, there was
25 nothing that made nitrous oxide specifically a

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2 prohibited offense to possess, sell, or use. This
3 State legislation, much the way the proposed
4 ordinance would prohibit all three of those acts
5 -- use, possession and sale of nitrous oxide
6 along with other inhaleable substances that are
7 often abused by people in an effort to get high.

8 As we communicate this new State
9 legislation to our officers, both through the
10 annual training and through a training bulletin
11 that will be sent out forthwith, we can now direct
12 officers that when they see young people -- or old
13 people for that matter, but primarily this is a
14 you know person's problem -- abusing these
15 substances, that the individual can be arrested
16 for that offense on site as a misdemeanor and for
17 possession of those items as well.

18 Likewise, if we receive complaints
19 about sales of these products, we can arrest the
20 persons that are distributing these products --
21 when it's clear that there is -- the intention is
22 for abuse rather than for its legitimate purposes.

23 COUNCIL PRESIDENT VERNA: I guess this
24 became known to everybody, as far as the abuse is
25 concerned, at the stadium for the football games.

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2 But in your testimony, you say that this occurs in
3 the community quite often. Can you elaborate on
4 that, please.

5 INSPECTOR DALEY: Certainly. We've
6 received complaints over the past couple of years
7 and information from other sources that nitrous
8 oxide, among other inhaleable substances that
9 cause inebriation, are being abused in residential
10 neighborhoods in either house parties or, as often
11 occurs, with teenagers in wooded areas within the
12 City where they go to drink beer and party.
13 Heretofore, as we said, we weren't particularly
14 empowered to do anything about that.

15 Where we were able to have some success
16 at the stadiums, when this issue arose acutely
17 last year during sporting events and concerts and
18 things of that nature, we've been able to work in
19 partnership with Licenses and Inspections on the
20 issue of the sales, when someone was selling
21 nitrous oxide in balloons or other containers.
22 Licenses and Inspections could work with us in
23 issuing citations for violation of vending
24 ordinances. That was our only avenue of authority
25 in this area heretofore.

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2 In these residential situations, where
3 we would get a call or a complaint that a house
4 party was going on and there's kids, they just got
5 a whole bunch of tanks of laughing gas delivered,
6 we were pretty much powerless to do anything about
7 that. We could go and we could knock and we could
8 explain to the persons there that it was a
9 dangerous substance, but there was no legislation
10 in place, no legal authority for us to go any
11 further than that.

12 COUNCIL PRESIDENT VERNA: Thank you.

13 According to the Senate bill, this
14 would be a misdemeanor of the third degree. Can
15 you explain that to us, please.

16 INSPECTOR DALEY: A misdemeanor of the
17 third degree is the lowest grade of indictable
18 offense available under the Pennsylvania
19 statutes. As a misdemeanor of the third degree,
20 the person, upon conviction, could face a sentence
21 of up to one year in jail and up to I believe it's
22 a \$5,000 fine upon conviction. It would be a
23 custodial-arrest situation and would require that
24 the individual be fingerprinted and photographed,
25 and it would become a part of his criminal

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2 history.

3 COUNCIL PRESIDENT VERNA: Thank you.

4 And the Senate bill took effect
5 immediately upon the signature of the governor, or
6 within 60 days?

7 MR. HAIGLER: No, ma'am. That's why I
8 came up to --

9 COUNCIL PRESIDENT VERNA: Pardon me?

10 MR. HAIGLER: My name is Otis Haigler,
11 Legislative and Regulatory Affairs Manager for the
12 Department of Licenses and Inspections.

13 COUNCIL PRESIDENT VERNA: Good morning.

14 MR. HAIGLER: Good morning.

15 If you would look at the last page of
16 the bill, ma'am, where it talks about the -- at
17 the bottom there, the amendment of or addition of
18 18, Title 18, and specifically that section, 7303,
19 shall take effect 60 days, so it was 60 days after
20 the governor signed the law into effect. As a
21 matter of fact, I guess in effect, it took effect
22 sometime in March.

23 COUNCIL PRESIDENT VERNA: Thank you.

24 COUNCILMAN ORTIZ: So, Inspector,
25 following the President's questioning, it became

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2 effective 60 days, and I imagine that this is
3 usually perhaps abused more often in activities of
4 concerts, sports, and so on, along those lines and
5 I think the --

6 COUNCIL PRESIDENT VERNA: It's used in
7 residential.

8 COUNCILMAN ORTIZ: And at home, I
9 imagine, in certain issues.

10 But how are we going to believe -- is
11 it just going to be a part of the overall tactical
12 administration and implementation of the police
13 department? Is nitrous oxide going to be added to
14 the list that police will have at hand to see
15 whether they are pot smoking outside of the First
16 Union or at concert and so on, along those lines?

17 Are you going to have some orientation
18 with the Police Department as to nitrous oxide,
19 what it does, how to identify it, how to be able
20 to see whether people are affected by it and so
21 on? Is that going to happen?

22 INSPECTOR DALEY: I think really one of
23 the things that we want to do is provide training
24 for all police officers on nitrous oxide and the
25 other inhalants that are commonly abused that are

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2 now prohibited by the statute and some of the
3 effects, some of the indications that a person may
4 be under its effects and the dangers that are
5 involved in it.

6 On a specific situation such as a
7 concert at the First Union or at Vets Stadium or
8 any of these large sporting events, part of what
9 we will do in the operational order for those type
10 events is remind everyone at the roll call
11 briefing that anybody found in possession of
12 nitrous oxide or using nitrous oxide or telling
13 nitrous oxide or any of these others substance are
14 subject to arrest under the new statute in the
15 crimes code and they should be taken into custody
16 immediately.

17 COUNCILMAN ORTIZ: But how would they
18 know? Dr. Tsou, Dr. Tsou, are you going to give
19 the Police Department -- can you come up.

20 DR. TSOU: Sure.

21 (Dr. Walter Tsou comes forward.)

22 COUNCILMAN ORTIZ: Are you going to
23 give the Police Department some orientation as to
24 how this is used and the effect and the type of
25 behavior that it produces so that police can be

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2 much more aware of how the drug of choice at the
3 present time at certain events is used?

4 DR. TSOU: Well, we certainly would be
5 happy to work with the Police Department on that
6 issue. We actually have not had a formal
7 discussion about that, but certainly we're more
8 than willing to participate in this orientation.

9 COUNCILMAN ORTIZ: Inspector, are you
10 going to use the services of Dr. Tsou to at least
11 serve as a orientation device and give you some
12 writings into the nitrous oxide and what it does?
13 I have a newspaper article that my staff just
14 handed me here, health and questions and answers.
15 And it says that the dangerous of recreational use
16 of nitrous oxide -- and this came out of the
17 Internet, so this type of article, I would
18 imagine, would be useful to have every policeman
19 to read and at least have some questions and
20 answers on their hands.

21 INSPECTOR DALEY: Absolutely,
22 Councilman. We would be glad to have the
23 assistance of the Health Department in discussing
24 the effects and the consequences of nitrous oxide
25 abuse.

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2 We have, as already researched this a
3 bit with the National Institute of Drug Abuse Web
4 site and some of the other publications that we
5 normally receive from various groups, looked into
6 the issue of inhalant abuse and nitrous oxide
7 abuse specifically. I think certainly that
8 Dr. Tsou's assistance would enhance that greatly,
9 and we may be able to provide some very good
10 education for our officers in that regard.

11 And I think it's also, you know,
12 critically important for us to include the issue
13 of inhalant abuse and nitrous oxide specifically
14 in our demand reduction efforts.

15 COUNCILMAN ORTIZ: But this is not
16 going to lead to any raids on dentists' offices,
17 right?

18 INSPECTOR DALEY: We do not anticipate
19 breaking down doors and rescuing anybody from the
20 dentist's drill in these operations, but we would
21 like to at least raise consciousness amongst our
22 officers and also amongst the community at large
23 about the dangers involved here.

24 COUNCILMAN ORTIZ: Any questions?

25 COUNCIL PRESIDENT VERNA: Commissioner,

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2 I just have a statement. You have stated the
3 potential dangers of nitrous oxide. Does the
4 Health Department have any plans to create a
5 program to get the message out to many of the high
6 school youngsters who may have, in fact, be using
7 the substance?

8 DR. TSOU: We have many efforts to try
9 to educate school kids about a variety of issues
10 around drugs, and part of the curriculum that we
11 plan to be doing will include issues around
12 nitrous oxide and its potential effects.

13 We also plan to be working in
14 developing after-school programs as one of the
15 Mayor's major objectives, and we believe that drug
16 education, including about nitrous oxide, will be
17 a part of that educational program.

18 COUNCIL PRESIDENT VERA: Thank you. I
19 think that's extremely important.

20 Thank you.

21 COUNCILMAN ORTIZ: Any further
22 questions?

23 (No further questions.)

24 COUNCIL PRESIDENT VERA: No, thank
25 you.

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2 COUNCILMAN ORTIZ: Thank you.

3 Does anyone else have anything else to
4 contribute?

5 (No response.)

6 COUNCILMAN ORTIZ: Thank you. All of
7 the testimony will be made a part of the record.
8 I want to thank you for attending the hearing and
9 the testimony that you submitted. Thank you very
10 much.

11 And I hope that next time you will
12 remember that it's 48 hours prior to the hearing,
13 48 hours, not at 5 o'clock the day before the
14 hearing. Thank you very much.

15 The Committee on Public Safety stands
16 in recess.

17 COUNCIL PRESIDENT VERNA: I want to
18 withdraw.

19 COUNCILMAN ORTIZ: And Bill No. 000674
20 is withdrawn.

21 COUNCIL PRESIDENT VERNA: Thank you.

22 COUNCILMAN ORTIZ: By the author.

23 COUNCIL PRESIDENT VERNA: Thank you.

24 (Adjourned 10:43 a.m.)

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C E R T I F I C A T E

I HEREBY CERTIFY that the foregoing
proceedings of the Council of the City of
Philadelphia of Wednesday, April 18, 2001, were
reported fully and accurately by me, and that this
is a correct transcript of same.

RE: COUNCIL COMMITTEE ON PUBLIC SAFETY
BILL NO. 000674

_____,
JOSEPHINE CARDILLO,
Registered Professional Reporter