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COUNCIL OF THE CITY OF PHILADELPHIA

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COMMITTEE ON LICENSES AND INSPECTIONS

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Room 400, City Hall
Philadelphia, Pennsylvania
Thursday, May 24, 2007
9:50 a.m.

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PRESENT:

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COUNCILMAN DANIEL SAVAGE, CHAIR

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COUNCILMAN DARRELL L. CLARKE

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COUNCILWOMAN JOAN L. KRAJEWSKI

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COUNCILWOMAN BLONDELL REYNOLDS BROWN

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COUNCILMAN FRANK RIZZO

15

COUNCILWOMAN MARIAN B. TASCIO

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BILL 070367 - An ordinance amending Chapter
9-2900 of The Philadelphia Code, entitled
"Take-Out Sale of Malt and Brewed Beverages,"
by creating the Malt and Brewed Beverage
Hearing Board...

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V A R A L L O Incorporated

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Litigation Support Services

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Eleven Penn Center

1835 Market Street, Suite 600

Philadelphia, Pennsylvania 19103

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COUNCILMAN SAVAGE: Good

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morning. The Committee on Licenses and

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Inspections is now in session.

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Will the Clerk please read the

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bill to be heard today.

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THE CLERK: An ordinance

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amending Chapter 9-2900 of The

9

Philadelphia Code, entitled "Take-Out

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Sale of Malt and Brewed Beverages," by

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creating the Malt and Brewed Beverage

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Hearing Board and revising the fee and

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procedures for the request for City

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approval of a permit to sell malt or

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brewed beverages for off-premises

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consumption, and amending Section 20-304

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of The Philadelphia Code, to provide for

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the compensation of the Hearing Board;

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all under certain terms and conditions.

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COUNCILMAN SAVAGE: I'd like to

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recognize that a quorum is present today.

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We have Councilwoman Krajewski present,

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Councilman Darrell Clarke and Councilman

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Rizzo.

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We will now hear testimony on

1 5/24/07 - L&I - BILL 070367

2 Bill No. 070367. Is there anyone here
3 from the Administration to testify?

4 Good morning.

5 MR. HAIGLER: Good day,
6 Councilman Savage. We presented our
7 testimony on Tuesday regarding this bill,
8 and the testimony has been submitted and
9 has been read into the record. So at
10 this point, we're here today to answer
11 any questions and to see if we can come
12 to a resolution on this bill.

13 COUNCILMAN SAVAGE: Okay.

14 Are there any questions from
15 the members of the Committee?

16 I recognize Darrell Clarke,
17 Councilman.

18 COUNCILMAN CLARKE: Thank you,
19 Mr. Chairman.

20 Good morning, Mr. Haigler.

21 MR. HAIGLER: Good morning.

22 COUNCILMAN CLARKE:
23 Mr. Haigler, you recall at the last
24 hearing there were some concerns raised
25 about some of the language and the

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2 requirements and the limitations and the
3 prohibitions as it relates to
4 authorization to issue a permit, and I
5 know you've had some discussions with a
6 number of individuals, both from the Law
7 Department, City Council and some members
8 of the community, about several
9 provisions. I understand that one of
10 those particular provisions talks about
11 the conditions for approval or denial of
12 the application.

13 MR. HAIGLER: That's correct.

14 COUNCILMAN CLARKE: Will that
15 be offered as an exhibit today by the
16 Department?

17 MR. HAIGLER: Yes. We have
18 prepared regulations to this ordinance in
19 anticipation that it would pass. Once
20 the ordinance passes, the regulations
21 will be submitted through the Law
22 Department and then to our Records
23 Department, and within 30 days after its
24 submission to the Records Department, the
25 regulations become effective.

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2 The regulations pretty much
3 takes into account what's in the Act, Act
4 155. The Act itself indicates that the
5 Board would have regulations, and those
6 regulations were prepared pursuant to the
7 Act.

8 The regulations also carves out
9 a particular section that was in the
10 previous ordinance and places it in
11 regulation form. So it maintains some of
12 those same requirements that Council had
13 in the past under Section 9-2900.

14 COUNCILMAN CLARKE: Okay.
15 Mr. Haigler and members of the Committee,
16 for the record, there has been what we
17 hope to be a consensus reached on
18 language that will be offered as an
19 amendment. Two specific issues. One is
20 the definition of a neighborhood-based
21 community organization. That will be
22 Section (g) under 3. It will be a
23 neighborhood-based community group
24 established to promote the general
25 welfare of a neighborhood which set forth

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2 boundaries used to define the mission of
3 the organization, cover the address of
4 the applicant premises.

5 MR. HAIGLER: That amendment --
6 that is being further amended, and I'll
7 allow the Councilwoman to address that,
8 if she would like.

9 COUNCILMAN CLARKE: We do that.
10 That's what we do.

11 Councilwoman Tasco I think
12 wanted to speak.

13 COUNCILWOMAN TASCO: I'm going
14 to have Sharon speak on it.

15 COUNCILMAN SAVAGE: The Chair
16 recognizes Councilwoman Tasco.

17 COUNCILWOMAN TASCO: Thank you
18 very much. Mr. Chairman, I'd like Sharon
19 Losier, who is my staff representative,
20 who has served as a hearing examiner. We
21 went through this bill to kind of examine
22 what we thought would be in the best
23 interest of the community and came up
24 with a couple of recommendations. So I'm
25 going to ask her to come forth and make

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2 the testimony on the bill.

3 We have more than one.

4 COUNCILMAN SAVAGE: Okay.

5 For the record, could you
6 please state your name.

7 MS. LOSIER: My name is Sharon
8 Williams Losier, legislative assistant to
9 Councilwoman Tasco.

10 I believe it was the summer and
11 early fall of 2005 when I served as a
12 hearing examiner for about two or three
13 hearings regarding the applications for
14 take-out beer. During those hearings,
15 one thing that I realized was so often
16 the evidence that was necessary to be
17 considered under the statute was not
18 present, either it was not brought by any
19 of the parties or it was not available in
20 the file, but yet there would be these
21 letters from community groups that were
22 so poignant in their feelings with
23 respect to some of these establishments
24 that were going on in their community.
25 And often these community groups could

10 There was a lawyer representing
11 each of the applicants, and it was a
12 valid hearsay objection to the letter and
13 it was just no means to properly
14 authenticate the letter or have the
15 letter considered in any way in the
16 determination as to whether or not that
17 particular establishment would have an
18 adverse effect on the community, which
19 was the standard that you were supposed
20 to consider.

21 So in speaking with the
22 Councilwoman about it, she was concerned
23 that there be a little bit more ability
24 for the persons from the community to
25 have their position shown and that there

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2 be a way for the Board to have all the
3 relevant evidence available when they're
4 making these decisions whether or not to
5 grant these applications.

6 So with that in mind, the
7 amendments also -- the first amendment on
8 the first page is an addition to the
9 application form. Included on the
10 application form the applicant should
11 provide their Liquor License Control
12 Number, and that would allow a better
13 investigation of the state law
14 enforcement with respect to this
15 establishment. Also -- and that
16 amendment, it's Section 9-2902, Section
17 (1), requiring that no application will
18 be accepted without the applicant's
19 Pennsylvania Liquor License Number
20 clearly indicated on the application.

21 The second amendment has to do
22 with --

23 COUNCILWOMAN TASC0: What page?

24 MS. LOSIER: I don't have the
25 pages. Page 3, it looks like. Is in

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2 addition to Section 9-2904, Subsection
3 (2) where the protests should also
4 include information regarding the
5 following, although failure to include
6 any such information shall not result in
7 the rejection of the protest: A, the
8 character of the neighborhood; B, the
9 identity -- excuse me. "The character of
10 the surrounding neighborhood; B, identify
11 and indicate the proximity of the houses
12 of worship, schools, playgrounds, daycare
13 centers, senior citizen centers,
14 charitable institutions or other
15 non-profit organizations in the
16 surrounding neighborhoods; C, the
17 proximity of other establishments engaged
18 in the take-out beer business; D, any
19 other factor that could show that the
20 approval of the application would
21 adversely affect the welfare, health,
22 peace and morals of the City or its
23 citizens." And that section is to
24 suggest to the protesters the type of
25 relevant information that should be

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2 included in their protest documents, so
3 that this information, which should be
4 properly before the Board, will be before
5 the Board and can be considered in their
6 deliberations.

7 The second amendment to that
8 same section, Section 9-2904, Filing
9 Protests, Section (3), Subsection (f),
10 has been amended to include "a recognized
11 community group or neighborhood group or
12 other organization that includes or
13 represents any combination of individuals
14 or businesses who reside or which are
15 located within 500 feet of the premises."
16 And this is to allow community groups
17 that are in a particular area to not have
18 the requirement of identifying 10 to 15
19 individuals before they can file a valid
20 protest, and this language was suggested
21 by the Law Department and additionally
22 has been reviewed by L&I.

23 The third amendments have to do
24 with -- are amendments to Section 9-2906
25 regarding the hearing process, and the

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2 purpose of -- I can read this amendment
3 and then I'll indicate the purpose.

4 It amends the section, Section
5 (1), by adding the language "and of the
6 availability of the information assembled
7 regarding the applicant as set forth
8 below." And the indication of this
9 availability would be when the applicant
10 and the protesters are notified of the
11 date of their hearing. And "any party to
12 a proceeding may request, based on
13 hardship, that the Board schedule the
14 hearing during evening hours, which the
15 Board may grant in their discretion."

16 A second amendment to that
17 particular provision is "upon assembly by
18 the Department of License and Inspections
19 of the following information, such
20 information shall be made available upon
21 request to any party," and that is, A,
22 the history of the state and local law
23 enforcement actions brought against the
24 premises; B, the number and nature of
25 calls to the Police Department's 9-1-1

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emergency response system or the State Police Bureau of Liquor Control Enforcement relating to the incidents occurring within and immediately outside the premises; C, information regarding the applicant's delinquency in the payment of City or school taxes, charges, fees, rents or claims; and, D, current L&I status of the applicant at the applicant premises.

12 "Such information, to the
13 extent it is reflected in the documents
14 prepared by any government officer or
15 employee, may be admitted into evidence
16 upon authentication by either testimony
17 or written verification by the
18 appropriate witness."

19 And, again, these amendments
20 will further allow that the relevant
21 evidence be before the Board and
22 available to the applicant and the
23 protesters. The information will be
24 gathered by an employee of Licenses and
25 Inspections and each party be aware of

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2 its availability when they're notified of
3 the hearing date. And this evidence can
4 also be admitted as evidence before the
5 Board with a written verification, which
6 lessens the evidentiary burden to whoever
7 is seeking to have that evidence
8 admitted. So, in other words, it could
9 help either the protester or the
10 applicant if they could have those
11 records before the Board, and it will
12 greatly assist the Board or anyone
13 examining those particular facts to make
14 a correct determination about an
15 establishment. And, also, the
16 availability of evening hearings would
17 alleviate some of the hardship that some
18 of the community groups had in finding an
19 individual who could attend a daytime
20 hearing.

21 So those are the extent of
22 Councilwoman Tasco's amendments.

23 COUNCILMAN SAVAGE: Thank you
24 for your testimony.

25 Are there any questions from

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2 members of the Committee?

3 The Chair recognizes Councilman
4 Clarke.

5 COUNCILMAN CLARKE: Thank you,
6 Mr. Chairman.

7 Actually, Mr. Haigler, I was
8 prepared to offer an additional amendment
9 that talked about the state regulatory
10 process. Is it your contention that the
11 language that I showed you earlier is
12 actually in the Act?

13 MR. HAIGLER: It's in the Act,
14 Councilman, and it's also in the current
15 bill before you that's under
16 consideration as far as the state
17 presenting its evidence or its
18 information as to violation that it may
19 have of record. We're going to be
20 collecting that information ourselves, as
21 was just testified to, and it will be
22 made available to all parties.

23 COUNCILMAN CLARKE: And that
24 information will -- request for issuance
25 of a permit will be subject to this state

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2 regulatory language in addition to the
3 language that was earlier --

4 MR. HAIGLER: Yes, as well as
5 the regulations that the Department is
6 promulgating right now.

7 COUNCILMAN CLARKE: Well, I
8 will not offer this amendment because
9 this is somewhat redundant.

10 MR. HAIGLER: Yes.

11 COUNCILMAN CLARKE: Thank you.

12 MR. HAIGLER: Thank you.

13 COUNCILMAN SAVAGE: If there
14 are no other people here to testify --
15 the Chair recognizes Councilwoman Tasco.

16 COUNCILWOMAN TASCO: Yes. I
17 just want to let the Councilmembers know
18 that our staff worked with all of the
19 parties, the Law Department, L&I and
20 Steve Masters. Everybody had a part of
21 this discussion. So it was just not done
22 arbitrarily, but those parties were all a
23 part of the discussion.

24 COUNCILMAN SAVAGE: Thank you.

25 Thank you for your testimony.

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2 If there are no other people
3 here to testify, this concludes our
4 public hearing on the Committee -- good
5 morning, Ms. Cummings. Since you've
6 already testified, could you make your
7 statements brief and enter your testimony
8 for the record?

9 MS. CUMMINGS: Yes.

10 COUNCILMAN SAVAGE: Thank you.

11 MS. CUMMINGS: Good morning.
12 My name is Bonita Cummings, Director of
13 Strawberry Mansion Community Concern.

14 I just wanted to comment on the
15 amendment that says "proposed amendments
16 submitted by Councilman Darrell L.
17 Clarke" and is Paragraph 5 under Section
18 9-2903, "if an inspection" --

19 COUNCILMAN CLARKE:
20 Ms. Cummings, I'm not offering any
21 amendments.

22 MS. CUMMINGS: So this is
23 not -- well, if this amendment is not
24 offered, then we have no way of knowing
25 again in the community, according to

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2 Mr. Haigler's comments -- I'm looking at
3 the Guide to Pennsylvania Liquor Laws.
4 When I talk about the Title 47 Code that
5 says what is required, operating not as a
6 bona fide restaurant, insufficient food,
7 seating, et cetera, in terms of
8 compliance, in order for any of this bill
9 to be effective, we have to be able to
10 know that the requirements, the state law
11 requirements, are going to be a part of
12 the process. Other than that, it's an
13 exercise in futility.

14 Mr. Haigler says they don't
15 enforce the state law. The only
16 amendment that I had to go by was the one
17 that I'm looking at that does mention
18 state laws or local ordinances.

19 COUNCILMAN CLARKE: I will
20 offer the amendment.

21 MS. CRAWFORD: You will offer
22 the amendment?

23 MS. CUMMINGS: Other than that,
24 we don't have any way of knowing --

25 COUNCILMAN CLARKE: I will

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2 offer the amendment.

3 MS. CUMMINGS: The amendment
4 that we're looking at that's in this --

5 MS. CRAWFORD: Your amendment?

6 COUNCILMAN CLARKE: Yes.

7 MS. CRAWFORD: And the other
8 thing that I'd like to address -- Vivian
9 Crawford. I testified on Monday in
10 regards to this bill. I am First
11 Vice-Chair of Neighborhood Networks and
12 also counsel to the African-American
13 Heritage Coalition.

14 My question is, the language
15 that was just read by Ms. Losier, her
16 amendment for -- it should be paginated.
17 But for Section (2)(3), Subset (f), the
18 inclusion of the word a "recognized
19 community or neighborhood group or other
20 organization that includes or represents
21 any combination of 15/10 individuals or
22 businesses who reside or which are
23 located within 500 feet of the premises."
24 My objection is to the word "recognized,"
25 because it doesn't establish recognized

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2 by whom.

3 I'm sorry. I stand corrected
4 in terms of the number 10/15, but I still
5 have an objection to the word
6 "recognized" community group.

7 COUNCILMAN SAVAGE: Can you
8 clarify what you mean by "recognized"?
9 Sharon, could you please come and clarify
10 that?

11 MS. LOSIER: The word
12 "recognized" was included as just some
13 sort of gatekeeper with respect to
14 organizations of maybe one person. And
15 while there is not any particular
16 definition of a recognized community
17 group, it's more or less an understood
18 definition. And if we did say that it
19 was recognized by a particular entity,
20 then we'd probably be omitting a
21 particular entity. But just by having it
22 recognized is not in any way limiting a
23 community group. And if there's anyone
24 that feels as though that limits a
25 community group, I think as though it

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2 kind of allows -- it does by not
3 indicating who is recognized, it kind of
4 allows latitude in a community group
5 being able to file a protest.

6 MS. CRAWFORD: My objection to
7 the word "recognized" is because it
8 leaves to the trier of fact too much
9 latitude to determine. I mean, they can
10 say that one group is recognized and one
11 is not. So my objection is to the
12 inclusion simply of the descriptive word
13 "recognized." I think if we take that
14 out and it says "a community or
15 neighborhood group," then there's no
16 objection, but I do object to
17 "recognized," because that is too
18 nebulous.

19 COUNCILMAN SAVAGE: The Chair
20 recognizes Councilwoman Tasco.

21 COUNCILWOMAN TASCO: May I make
22 a suggestion? Is there a time limit when
23 this bill has to be out? I'm not saying
24 hold it up. I'm just saying move it out
25 and we can come to some agreement on

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2 language. We can still amend it and get
3 it passed.

4 COUNCILMAN SAVAGE: Okay.

5 COUNCILWOMAN TASC0: Can we do
6 that?

7 COUNCILMAN SAVAGE: I agree.

8 COUNCILWOMAN TASC0: So what
9 we'll do, we'll vote it out of Committee
10 as is. We'll work with them and the Law
11 Department and the other suits, try and
12 come up with some language that people
13 can agree on and just amend it at the
14 next reading and then pass it.

15 COUNCILMAN SAVAGE: I agree. I
16 think that works.

17 MS. CRAWFORD: Just so that I
18 understand, does that mean that the
19 amendments that you proposed and the
20 amendment proposed by Councilman Clarke
21 are going to be referred back?

22 COUNCILWOMAN TASC0: No. We
23 will pass those amendments.

24 MS. CRAWFORD: You'll pass the
25 amendments? Okay.

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2 COUNCILWOMAN TASC0: If we come
3 up with -- we'll work in the meantime in
4 the next week or so to come up with some
5 language that we can all agree on with
6 this word "recognized" on community
7 group. Then we can amend it on the floor
8 before it's passed.

9 MS. CRAWFORD: Very good.

10 COUNCILWOMAN TASC0: But we
11 want to get it out of Committee, and we
12 got Council to get started today.

13 MS. CRAWFORD: I thank you so
14 much.

15 COUNCILWOMAN TASC0: Thank you.

16 COUNCILMAN SAVAGE: Thank you
17 for your testimony.

18 If there are no other people
19 here to testify, this concludes our
20 public hearing on the Committee of
21 License and Inspections. We will now
22 move into our public meeting.

23 The Chair recognizes Councilman
24 Clarke for a motion on an amendment on
25 Bill No. 070367.

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2 COUNCILMAN CLARKE: Actually,
3 Mr. Chair, I will be offering an
4 additional amendment as a part of the
5 earlier referenced amendments. This
6 particular amendment references the
7 change in the fee schedule. In addition,
8 it adds the language with respect to the
9 state regulations, and I'll read it very
10 briefly, because I know we're in a public
11 meeting.

12 In Section 1, it changes the
13 fee for application from \$200 to \$300.
14 Section 5, it adds Section 5. The
15 language reads as follows: "If an
16 inspection demonstrates that the
17 applicant has failed to obtain all
18 permits and approvals required by law for
19 the operation of the take-out beer or
20 malt liquor establishment at the
21 premises, or finds that the applicant is
22 otherwise not in compliance with the
23 provision of any state laws or local
24 ordinances regulating the conduct of the
25 business at the subject premises, the

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2 Department of License and Inspection
3 shall forthwith file a protest against
4 the application with the Malt and Brewed
5 Beverage Hearing Board."

6 With that, Mr. Chair, I would
7 like to ask for the approval of the
8 amendments as previously referenced in
9 the public hearing to Bill No. 070367.

10 (Duly seconded.)

11 COUNCILMAN SAVAGE: All in
12 favor say aye.

13 (Aye.)

14 COUNCILMAN SAVAGE: Nays?

15 (No response.)

16 COUNCILMAN SAVAGE: The ayes
17 have it.

18 The Chair recognizes Councilman
19 Clarke for a motion on Bill No. 070367.

20 COUNCILMAN CLARKE: Thank you,
21 Mr. Chairman. Mr. Chairman, I move that
22 Bill 070367 as amended be reported out of
23 Committee with a favorable recommendation
24 and a request for rules suspension as to
25 allow reading at the next session of

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2 Council.
3 (Duly seconded.)
4 COUNCILMAN SAVAGE: All in
5 favor say aye.
6 (Aye.)
7 COUNCILMAN SAVAGE: Nays?
8 (No response.)
9 COUNCILMAN SAVAGE: The ayes
10 have it. Bill No. 070367 will be voted
11 out of Committee with a favorable
12 recommendation.
13 This concludes our public
14 meeting and ends our Committee on
15 Licenses and Inspections.
16 (Committee on Licenses and
17 Inspections adjourned at 10:15 a.m.)

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CERTIFICATE

I HEREBY CERTIFY that the
proceedings, evidence and objections are
contained fully and accurately in the
stenographic notes taken by me upon the
foregoing matter on May 24, 2007, and that
this is a true and correct transcript of same.

MICHELE L. MURPHY
RPR-Notary Public

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