

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON PUBLIC SAFETY

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June 8, 2010
Start: 10:12am
Recess: 11:30am

HELD AT: Council Chambers
City Hall

B E F O R E:
PETER F. VALLONE, JR.
Chairperson

COUNCIL MEMBERS:
Council Member Erik Martin Dilan
Council Member Julissa Ferreras
Council Member Helen D. Foster
Council Member Daniel R. Garodnick
Council Member James F. Gennaro
Council Member David G. Greenfield
Council Member Daniel J. Halloran III
Council Member Eric A. Ulrich

A P P E A R A N C E S (CONTINUED)

Ali Rosa-Salas

Intern

National Organization for Women, New York City

Elizabeth Bliss

Policy Specialist

New York State Coalition Against Domestic Violence

Leroy Fraser

Executive Assistant for External Affairs

New York County District Attorney's Office

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[gavel]

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CHAIRPERSON VALLONE: Okay. Good morning, everyone. Welcome to the, today's Public Safety Committee Hearing. Today we'll be discussing a Preconsidered Resolution which calls on the New York State Legislature to pass a bill commonly known as the Strangulation Prevention Act of 2010, sponsored by Council Member Julissa Ferreras, myself and Speaker Quinn. I'm pleased to report that yesterday, the Bill passed the New York State Senate 58--59 or 58?--59, even better, 59 to zero. And it was delivered to the New York State Assembly. One would think that would mean the Assembly would pass it, but as I've said many times, the New York State Assembly is where good criminal legislation often goes to die. So we did not want to take any chances, and we wanted to weigh in as a City Council, and let the Assembly know how important we think this, this Act is, and that we want them to move on this as soon as possible. Obviously, domestic violence is a very serious issue, we take it that way. We've had many hearings on this topic in the past; in fact, about a year ago, we held a hearing on domestic

1 violence, and it was specifically within the
2 immigrant community. Today, the Resolution we're
3 discussing supports State Legislation that would
4 create an "A" Misdemeanor for criminally
5 obstructing breathing or blood circulation, and
6 would also create felonies for the crime of
7 strangulation in the first and second degree.
8 Every year, many domestic violence victims are
9 strangled or choked; frequently, however, despite
10 the seriousness of that abuse, defendants are only
11 charged with a low level misdemeanor or often a
12 violation, such as harassment. That's because DAs
13 have, have difficulty bringing higher charges
14 because strangulation victims often don't show
15 physical marks, which are necessary to prove
16 injury. As a former Assistant, I can tell you
17 that if someone strangles someone else it doesn't
18 take a lot of pressure. And oftentimes there
19 aren't bruises. There may be a few marks, but
20 that does not count as physical injury for the
21 courts of law. So something that serious, which
22 could result in unconsciousness or almost, someone
23 almost being unconscious, without the actual
24 bruises on the neck, it's very difficult to charge
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2 assault, which means they charge harassment, which
3 is only a violation, which is, brings up a whole
4 slew of problems in prosecution and arrest. You
5 can't arrest based on harassment unless you
6 actually see it, if you're a police officer; and
7 this would make it a misdemeanor from the
8 beginning, which will help, will seriously help
9 with the prosecution of strangulation. It's vital
10 to equip police officers and DAs with the
11 necessary tools they need to arrest and properly
12 prosecute defendants who choke or strangle their
13 victims. We have written testimony from many of
14 the district attorneys today, every one of whom
15 supports the passage of this Act. And we are, we
16 are going to start today with, I believe a
17 representative from NOW was here, and we also
18 expect to hear from the Manhattan DA's office, and
19 a few other advocates who are coming from, from
20 faraway places. So, should be here very soon.
21 So, I want to thank our representative from NOW,
22 her name is Ali Rosa-Salas, and I'd like to ask
23 you to come on up and take a seat. Now, to turn
24 that mic, you got to turn that mic on by hitting
25 that button. And please just identify yourself

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and, and begin.

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ALI ROSA-SALAS: Okay. Hi, my name is Ali Rosa-Salas. And I'm speaking on behalf of the, the Executive Director Sonia Ossorio of the National Organization for Women of New York City. And I'm here to talk in support of the Strangulation Prevention Act. Because currently in New York, choking is not considered a serious crime, unless the victim shows sign of physical injury. NOW NYC believes that it's crucial for the New York State Legislature to pass the Strangulation Prevention Act because it makes choking a crime. As the United States' largest women's rights organization, NOW has historically been on the front lines advocating for the end of violence against women, as well as gender equality within our criminal justice system. The Strangulation Prevention Act will close a major loophole in our law, by ensuring that abusers will be held accountable for their violence, before their brutality results in the death of those that they terrorize. Choking is a terrifying form of abuse that often has more serious consequences than punching, hitting and other kinds of physical

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2 violence. With only eleven pounds of pressure
3 placed on a neck for only ten seconds, one can go
4 completely unconscious. And after a victim is
5 choked and may or may not go unconscious, he or
6 she can die hours or even days later due to damage
7 to the neck or lack of oxygen to the brain. In
8 the United States, one out of every ten violent
9 deaths is due to strangulation. Choking is a
10 crime that is all too common in domestic violence
11 and sexual abuse cases, and it is important to
12 note that this assault rarely leaves visible signs
13 at all. About half of the states in our country
14 have enacted legislation that regards choking as a
15 criminal offense; however, in New York, the only
16 charge police can file when a batterer chokes
17 their victim is for harassment, which is not even
18 a misdemeanor offense. And also, the bar of
19 evidence for physical injury is set far too high
20 to make an arrest, even when choking evidently
21 occurred. And because of this loophole in our
22 State's law, batterers often use strangulation as
23 a means to terrorize their victim. This has
24 become their weapon of choice, because they know
25 that they cannot be arrested. So many of these

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2 perpetrators become repeat offenders because their
3 violence continues to go unpenalized. It is
4 critical that New York State have a law that
5 criminalizes intentional strangulation that cuts
6 off a person's air flow, whether or not physical
7 evidence exists. In most strangulation cases,
8 police cannot arrest an abuser if the victim does
9 not show any proof of physical injury. But NOW
10 supports the Strangulation Prevention Act because
11 it will deem choking someone as a violent felony,
12 whether or not the victim becomes unconscious or
13 shows sign of physical injury. Strangulation
14 Prevention Act will tackle a significant injustice
15 in New York State legislation that
16 disproportionately impacts women who are victims
17 of domestic and sexual abuse. If passed, this
18 bill will make certain that when a victim who is
19 choked calls 911, their attacker will be held for
20 the consequences fitting of the horrendous crime
21 that is committed on them. Thank you.

22 CHAIRPERSON VALLONE: Thank you.

23 Stay, stay, Ali, stay. [laughs] I first of all
24 want to thank you for coming in today.

25 ALI ROSA-SALAS: Thank you.

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2 CHAIRPERSON VALLONE: And for the
3 leadership you organization has shown on this
4 issue. I'll be, before we get to some questions,
5 I want to welcome Council Member Julissa Ferreras,
6 who is the prime sponsor of this bill, and I'd
7 like to turn the floor over to you for some
8 statements.

9 COUNCIL MEMBER FERRERAS: Good
10 morning, thank you, Chair Vallone, and the members
11 of this Committee, and advocates of public safety.
12 I am Council Member Julissa Ferreras and the Chair
13 of the Committee on Women's Issues. I am here to
14 introduce this important Resolution for your
15 consideration. Domestic violence as a criminal
16 category stands apart for many reasons. It's
17 prevention is not aided by surveillance or
18 additional police presence in the community.
19 Prosecution of no other type of crime is so
20 baffled by the reluctance of victims to testify.
21 In no other type of crime are children so often
22 witness and victims themselves. For these and
23 other reasons, domestic violence continues to
24 plague our City, even while violent crime as a
25 whole has decreased generally. One particularly

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2 heinous form of domestic violence is choking or
3 strangulation. Choking is a statistical predictor
4 of further battery. In fact, two-thirds of DV
5 victims report having been choked by their
6 partner. Ten percent of violent death in the U.S.
7 are due to strangulation, and female victims
8 outnumber male by a factor of six. These
9 statistics, the statistics bluntly illustrate both
10 that strangulation is a major component of
11 domestic abuse, and a major crime in itself. New
12 York State law does not currently address
13 intentional strangulation as a crime in itself,
14 unlike half of the other states. Thus, if a
15 batterer strangles his partner without leaving any
16 marks it is likely that he will be charged with
17 second degree harassment, which bears a maximum
18 penalty of 15 days in jail and a fine of \$250.
19 There are bills before the State Senate and
20 Assembly now that would create crimes of criminal
21 obstruction of breathing or blood circulation and
22 strangulation in the first and second degrees.
23 This bill would close the existing loophole and
24 give prosecutors additional tools to stop
25 batterers before they cause more harm. I urge you

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2 to vote yes on this Resolution before you now,
3 which urges Albany to pass these bills
4 immediately. Thank you.

5 CHAIRPERSON VALLONE: Thank you.
6 And thank you for your leadership on this.
7 Julissa and I help a domestic violence forum not
8 too long ago, with Public Advocate Bill de Blasio,
9 where this information came to our attention. And
10 like I say, I'm a former prosecutor, and even I
11 wasn't aware of, of this situation until just
12 recently. That's how--and the second we became
13 aware of it, aware of it, we moved as quickly as
14 possible. In fact, we're having a hearing today
15 before the formal introduction of this legislation
16 tomorrow. And we're actually voting on it. I'm
17 not sure how, but we're voting on it before it's
18 formally introduced. I'm not sure that's ever
19 happened before, but that's how important we think
20 this is. So, so Ali, thank you again for coming
21 down. You pretty much could've written my opening
22 statement, and I could've written yours, that's
23 how in tune we are with this. But can you give
24 us, I think one of the most interesting things you
25 said is that batterers are aware of this, and they

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2 do this knowing they, they can't get prosecuted
3 for it. Do you have any examples of your work
4 with battered women where this has been a problem,
5 concrete examples?

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ALI ROSA-SALAS: Definitely. Well,
7 now, we, we have help lines and legal clinics
8 where women are able to come in and talk to
9 attorneys about their domestic violence cases, and
10 they often come in very helpless, because there's
11 been many times that they've, that they've tried
12 to get their batterers prosecuted, tried to do
13 anything that they could, anything that they
14 could, in order to prove that they'd been abused.
15 But a lot of times, they're choked. Or it might
16 be where they're just like banged up against the
17 wall, and their abuser, it has their hand against
18 their neck for about five seconds. And they don't
19 go unconscious, but that's still very terrifying,
20 very frightening and does happen very often. And
21 because it does happen very often, whether or not
22 that woman may or may not go unconscious, or may
23 or may not show signs of physical injury, it's
24 often that psychological and emotional abuse that
25 pervades daily for these women. So although they

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2 can't necessarily show the police that "I went
3 unconscious" or "Something physically has happened
4 to me," it's often the use of choking or
5 strangulation as a form of emotional or
6 psychological abuse that is very terrifying. And
7 when it's used continually, and more pressure is
8 placed over a long period of time, then it could
9 lead to death. So, NOW doesn't want it to get to
10 that point, where it has to get, where the, the
11 attacker will eventually place enough pressure
12 that that victim will actually die. So, that's
13 why the Strangulation Prevention Act is important,
14 because it will catch that abuser's action before
15 it gets to the point where their victim will
16 perish from strangulation. So, at NOW we have a
17 lot of women that come into our offices who have
18 been victims of strangulation over and over and
19 over again, but nothing physically has happened to
20 them, where they've gone unconscious or had to go
21 to the hospital. But it's that use of choking as
22 psychological and emotional abuse that is very,
23 very horrible, and that can eventually lead to
24 them dying.

25 CHAIRPERSON VALLONE: Thank you.

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2 In fact, there was a recent case up in Albany, in
3 March, actually, where someone who was involved
4 with the political system up there was accused of,
5 of choking his girlfriend. But the charge was
6 only harassment, and then I think that opened a
7 lot of people's eyes. And whether or not that
8 person received preferential treatment, I don't
9 know anything about, all that much about the case.
10 That most, many batterers are charged with
11 harassment, because that's all the prosecutors can
12 prove, when it comes to choking. And I want to
13 also recognize we've been joined by two of our
14 newest members to the Public Safety Committee,
15 Council Member Greenfield and Council Member
16 Halloran, thank you both for, for coming in. Do
17 any of the members have questions right now?
18 Okay, I'm going to--just stay for a second, Ali--
19 I'm going to read some of the testimony from the
20 district attorneys who submitted letters in
21 support of this, beginning with Dan Donovan from
22 Staten Island. He "strongly supports this
23 legislation as an important tool in the battle
24 against partner abuse," and says it's exactly what
25 you said, that "this type of conduct often fails

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2 to result in physical injury, and as a result law
3 enforcement can only charge defendants with a mere
4 violation of harassment. This will fill that
5 charging gap. And if a victim loses
6 consciousness, it will be a "D" or a "C" Felony,
7 and it'd be an "A" Misdemeanor just to obstruct
8 breathing or blood circulation." We also have
9 testimony from Queens, and Judge Brown, says that
10 says that "Domestic abusers often use
11 strangulation to terrorize their victims" and he
12 strongly supports this legislation and urges us to
13 close the loophole. Other testimony? About--
14 [pause] Ali, did you have prepared testimony?
15 Nothing for us?

16 ALI ROSA-SALAS: I do, actually.

17 CHAIRPERSON VALLONE: Do you have
18 copies for us here?

19 ALI ROSA-SALAS: Yes.

20 CHAIRPERSON VALLONE: All right,
21 stay, stay right there.

22 ALI ROSA-SALAS: I only have one
23 copy.

24 CHAIRPERSON VALLONE: Okay.

25 [pause]

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2 ALI ROSA-SALAS: I, I have one
3 copy. It's okay, okay. Thank you.

4 [pause]

5 CHAIRPERSON VALLONE: Okay, we're
6 going to--we don't have any questions for you
7 because it's a very, we all, we're all in
8 agreement, there's nothing else you can tell us
9 that's, that we don't, we're confused about. So
10 thank you for coming in.

11 ALI ROSA-SALAS: Thank you.

12 CHAIRPERSON VALLONE: Feel free to
13 stay and listen to some of the rest of the
14 testimony.

15 ALI ROSA-SALAS: Thank you.

16 CHAIRPERSON VALLONE: We're now
17 going to move on to Elizabeth Bliss from the New
18 York State Coalition Against Domestic Violence.
19 Elizabeth, I'm told you drove all the way from
20 Albany this morning. So. We're, we're pleased
21 that we could rescue you from that [laughter]
22 abyss, but we also--

23 ELIZABETH BLISS: I'm originally
24 from New York, city folk, as you can say, so I'm
25 happy to be down here. [laughs]

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2 CHAIRPERSON VALLONE: So thanks for
3 coming in.

4 ELIZABETH BLISS: Good morning, my
5 name is Elizabeth Bliss, and I'm from the New York
6 State Coalition Against Domestic Violence, which
7 is a statewide membership organization that
8 consists of nonprofit, domestic violence service
9 providers throughout New York State. I appreciate
10 you holding this hearing and having me here today
11 to talk to you about the issues surrounding
12 strangulation. I'm--sounding like from the
13 testimony that I've heard so far, that we are all
14 on the same page that strangulation is a, is a
15 critical issue to be addressing. Domestic
16 violence is a pattern of coercive tactics used to
17 establish and maintain power and control over an
18 intimate partner. These tactics range from
19 nonphysical acts such as isolation and economic
20 abuse, to physical acts such as assault and
21 homicide. Some of these tactics are criminal
22 acts, and some of these tactics are noncriminal
23 acts. While the New York State Legislature has
24 made great effort to protect victims of domestic
25 violence, a missing piece of legislation has been

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2 legislation that addresses the unique nature of
3 strangulation. For years, advocates for victims
4 of domestic violence have stressed to police and
5 prosecutors how dangerous any act of strangulation
6 is. Strangulation does not always result in
7 death; however, research shows that ten percent of
8 violent deaths in the United States are
9 attributable to strangulation. Injury can occur,
10 but not be visible, and the victim may not realize
11 the impact of that injury until hours or days
12 later. Studies show that strangulation is a
13 significant risk factor for attempted or completed
14 homicide. For example, a study of women killed by
15 male partners in Chicago concluded that 53 percent
16 of the victims had experienced strangulation in
17 the preceding year, and 18 percent of those
18 victims that were killed were killed by
19 strangulation. The act of strangulation is
20 intimate and terrifying. Domestic violence
21 offenders use strangulation to control their
22 victim, to render their victim helpless. It ends
23 a conversation, it gets what the offender wants:
24 power and control. Imagine that during an
25 interaction with your intimate partner, your

1 partner uses one hand against your throat to push
2 you against a wall, applying pressure on your
3 carotid arteries, which are the major vessels that
4 transport oxygenated blood from your heart and
5 lungs to your brain. This pressure causes severe
6 pain that could lead to unconsciousness, followed
7 by traumatic brain injury or death. But let's
8 assume that you do not lose consciousness, but you
9 certainly do experience pain and fear. Your
10 intimate partner releases you and walks away. You
11 call the police, who respond. You tell them what
12 happened, they write a domestic incident report
13 for harassment in the second degree. Your
14 intimate partner, who just strangled you, does not
15 get arrested because the you act you describe is
16 "just a violation." The police officers concluded
17 this because your description meets the standards
18 of harassment in the second degree, not assault in
19 the third degree. The threshold of assault is
20 very high. Assault in the third degree requires
21 physical injury, which is not always readily
22 apparent in strangulation cases. Penal Law,
23 Section 10, Subsection 9, defines physical injury
24 as, "impairment of physical" I'm sorry,
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1 "impairment of physical condition or substantial
2 pain." This definition can vary widely because of
3 officer interpretation and discretion, placing a
4 heavy victim on the burden to describe the
5 physical injury. If the victim can't clearly
6 articulate impairment of physical condition or
7 substantial pain, the offender may not be charged
8 with assault. Right now, you, the victim can only
9 say, "He choked me." The result is that many
10 victims are left with the offender who does not
11 get arrested or prosecuted. We commend Senator
12 Schneiderman and Assemblyman Lentol for drafting
13 the Strangulation and Related Offenses legislation
14 to hold offenders accountable for acts of
15 strangulation. We thank the New York City Council
16 Resolution sponsors for supporting this
17 legislation. NYSCADV supports this legislation
18 because it addresses the unique and intricate
19 nature of strangulation, creating misdemeanor and
20 felony levels for this crime. The titling of the
21 misdemeanor level of the crime, "Criminal
22 Obstruction of Breathing and Blood Circulation,"
23 is descriptive of the act and more understandable
24 to people less familiar with the consequences of
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2 strangulation. With the passage of this
3 legislation, gone are the days of the expectation
4 of unconsciousness or bruising and red marks
5 around the neck. Police, prosecutors, victims,
6 and most importantly offenders, will know that
7 obstruction of breathing and blood circulation is
8 an act of violence for which persons must be held
9 accountable. Strangulation laws will allow
10 victims to feel heard and protected when police
11 respond. Strangulation laws inform the public
12 about the uniqueness and the dangerousness of the
13 act. Strangulation laws protect the citizens of
14 New York. Because of this, we ask the leaders of
15 New York State to make strangulation a crime.

16 CHAIRPERSON VALLONE: Thank you.

17 That's an amazing statistic, that 53 percent of
18 the victims had been strangled in the last year.

19 ELIZABETH BLISS: Yes.

20 CHAIRPERSON VALLONE: Just one
21 year, that, that's amazing.

22 ELIZABETH BLISS: I've been a
23 direct service provider for many years, and I,
24 most of my clients, and you know, no one's
25 conducting a study on this, but most of my clients

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experienced at least one act, if not more, of strangulation throughout their time with their, their violent, intimate partner.

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CHAIRPERSON VALLONE: And, and you're right to point out that the definition, impairment of physical condition or substantial pain, is a problem because of discretion of the officers, but, but it's not even so much the officers' discretion. They're told, and they're told what's actually happening at court, that the judges have set the bar really, really high.

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ELIZABETH BLISS: Right.

CHAIRPERSON VALLONE: So even if someone says, "I was in substantial pain," that's just not enough.

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ELIZABETH BLISS: Right.

CHAIRPERSON VALLONE: The courts will throw it out, and the DAs won't even put it in part of their complaint, unless it's a, an actual injury.

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ELIZABETH BLISS: Right.

CHAIRPERSON VALLONE: Substantial pain has pretty much been eliminated by the courts, and you know, even if, if someone is in a

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2 bar fight and, and gets hit with a vicious punch,
3 if they can take that punch, and they don't get up
4 with, with injuries on their face, then that may
5 not be an assault.

6 ELIZABETH BLISS: Right.

7 CHAIRPERSON VALLONE: But this is a
8 concrete example of, of the problems that arise
9 from that. So let me turn it over to Julissa.

10 COUNCIL MEMBER FERRERAS: I have a
11 question. With this legislation, would the
12 outreach change for victims of domestic violence
13 once you add this? And, and that's one part, does
14 the outreach change? And also, do you see that
15 there'll be a rise in reports to these service
16 agencies?

17 ELIZABETH BLISS: I don't
18 necessarily think that there would be a rise in
19 report to the service agencies, because this is
20 something that we're hearing about all the time.
21 I think the difference is that we're, it's going
22 to give an opportunity for victims, advocates and
23 police and prosecutors to work together to
24 actually have a response to the act of
25 strangulation. And when I worked in New York

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2 City, I provided direct services within the NYPD,
3 and I worked very closely with police officers who
4 I have great respect for, and we would debate on a
5 regular basis, if this act of strangulation was in
6 the third degree or harassment in the second. And
7 many times I would lose that battle because it
8 would be harassment in the second. Because they
9 could not, they could not prove the injury. You
10 know, and they would say, "Well, why didn't she go
11 seek medical treatment?" Well, the incident
12 happened at 3:00 o'clock in the morning, and the
13 children were asleep and she has to be at work at
14 8:00, and to leave and go to the emergency room
15 means waking up all the kids, getting them into
16 the ambulance and going to the emergency room, to
17 be treated by a doctor who may or may not be able
18 to identify if there is injury from the
19 strangulation. So, it's, I think that what this
20 will do, is provide confidence to victims who have
21 the police respond, tell this story, tell about
22 this act of, you know, it's terrorizing, it's
23 terrorizing to have something like this happen to
24 you, and for the police to actually have the
25 ability, you know, more of an ability than they do

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2 now, to respond to it, and arrest the offender at
3 the scene, or later if the offender fled the
4 scene, is going to provide confidence for victims
5 that the police response is adequate.

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COUNCIL MEMBER FERRERAS: Thank
you.

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ELIZABETH BLISS: Mhm.

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[pause]

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CHAIRPERSON VALLONE: Okay, again,
thank you for coming down. We're going to, as
soon as we get two more Council Members, we're
going to hold a vote on this. So, it should
happen relatively quickly. I'm now going to call-
-thank you very much.

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ELIZABETH BLISS: Okay, great,
thank you.

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CHAIRPERSON VALLONE: I'm now going
to call on Leroy Fraser from the Manhattan
District Attorney's office to provide us with
testimony. Thank you for coming in today.

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LEROY FRASER: Good morning,
Chairman Vallone and Members of the Council. I am
Executive Assistant District Attorney Leroy
Fraser, and I'm presenting testimony on behalf of

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2 New York County District Attorney Cyrus R. Vance,
3 Jr. Thank you for this opportunity to discuss why
4 Resolution, a resolution supporting Senate Bill
5 6987-A and A--10161-A is so important to victims
6 of domestic violence. When prosecuting
7 strangulation cases, Assistant District Attorneys
8 are faced with unnecessary barriers in protecting
9 victims and punishing perpetrators of domestic
10 violence crimes. Under the present Penal Law
11 Statutes, we often have to charge misdemeanor
12 assault resulting in low bail being set, and
13 thereby allowing their assailant an opportunity to
14 escalate actions to cause further injury. This
15 bill, or these bills, allow for felony charges
16 commensurate with the criminal act. These bills,
17 which Council Members Ferreras, Vallone, Speaker
18 Quinn are proposing this Resolution in support of,
19 provide the appropriate tools to hold abusers
20 accountable for their crimes. The Act of
21 strangulation may last a short time, leave little
22 or no visible damage, but have profound effects on
23 the victim. By way of background, light pressure
24 on the carotid arteries and veins in the neck, for
25 as little as ten seconds, can cause

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2 unconsciousness. Strangulation can have
3 substantial physical, neurological and
4 psychological health effects. The more often a
5 person is the victim of strangulation, the higher
6 the number of adverse health conditions they will
7 suffer. Strangulation attacks can have a long
8 term impact on victims' abilities to concentrate
9 on work and to multitask. If the trachea is
10 closed off, brain death can occur in four to five
11 minutes. We have found that women are exposed to
12 these terrifying realities more often than we
13 might imagine. Studies indicate that as many as
14 68 percent of female victims of domestic violence
15 experience at least one strangulation assault, and
16 up to 47 percent of such women report their
17 partner tried to strangle them in the past year.
18 Moreover, strangulation is seen as a key sign of
19 escalating domestic violence. Take for instance
20 the example of a recent Chicago hospital study
21 where 68 female participants revealed that their
22 partner had tried to strangle them in the
23 preceding year. Of those 68 females, 65 percent
24 reported that they experienced a severe incident
25 in the period between the initial interview and a

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2 follow up interview. Now, a severe incident was
3 defined as the incident resulted in permanent
4 injury, internal injury, head injury, broken
5 bones, threat or attack with a weapon, being
6 completely beaten up, strangled or burned. A
7 felony strangulation statute would send a strong
8 message to the abuser, and hopefully reduce the
9 number of severe incidents in the future. There
10 is no question that strangulation is a crime that
11 is seen far too often in prosecutors' offices.
12 Yet, because there's no penal law crime of
13 strangulation in New York State, prosecutors are
14 forced to charge these crimes as other, sometimes
15 ill fitted penal law crimes. For instance, if
16 strangulation is charged under the assault
17 statutes, the language of the statute requires the
18 prosecutor to prove serious physical injury or
19 assault with intent to cause physical injury, by
20 means of a deadly weapon or dangerous instrument.
21 In the first example, strangulation often does not
22 leave telltale physical injuries. Oftentimes the
23 act of strangulation may leave the victim with a
24 slight bruising. Such an injury would not satisfy
25 the Penal Law definition of serious physical

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2 injury, or even the developed case law defining
3 physical injury. Were it to reach the level of
4 physical injury, and not serious physical injury,
5 the assault must be committed by means of a deadly
6 weapon or dangerous instrument. In New York's
7 Penal Law, a deadly weapon includes a loaded
8 weapon, switchblade knife, gravity knife, Pium
9 ballistic knife, metal knuckle knife, dagger,
10 billy, blackjack, plastic knuckles or metal
11 knuckles. A dangerous instrument is an
12 instrument, article, substance or vehicle that is
13 readily capable of causing death or serious
14 injury. Hands, arms or other extremities falls
15 outside of these definitions, yet they are the
16 hallmark instruments of strangulation. Finally,
17 the felony assault laws require that the crime be
18 committed with intent to cause physical injury or
19 serious physical injury. Often, in these cases,
20 the intent is quite different. The abuser may
21 want to silence his partner, he may want her to
22 stop breathing, he may want to terrify her. In
23 some cases, women are strangled for purposes of
24 the commission of a sex crime against them. These
25 cases are no less deserving of a felony charge

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2 simply because the intent doesn't fit within the
3 existing Penal Law language. Because of these
4 gaps in the law, prosecutors are thus left with a
5 misdemeanor charge of assault in the third degree.
6 This charge carries a maximum sentence of one year
7 in City jail, defendants rarely serving close to
8 the full sentence. In the more egregious
9 strangulation cases, the low level charges and
10 brief sentences shortchange victims and send the
11 wrong message to abusers. The, the laws proposed
12 and supported by this resolution, sponsored by the
13 City Council and the Public Safety Committee, the
14 law would afford the three classes of a crime, "A"
15 Misdemeanor for criminal obstructive of breathing
16 or blood circulation, the "D" Felony of
17 strangulation in the second degree, and the "C"
18 Violent Felony of strangulation in the first
19 degree. More than 27 states already have some
20 sort of strangulation statute. In one of those
21 states, Minnesota, the study on the effectiveness
22 of the law found that the felony domestic
23 strangulation statute enhanced victims' safety,
24 increased offender accountability and, given those
25 facts, may prevent future domestic homicides. It

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2 is time that New York follows suit by passing this
3 law. Thank you.

4 CHAIRPERSON VALLONE: Thank you,
5 Mr. Fraser. What, what is the your position with
6 the DA's Office? Just for the record.

7 LEROY FRASER: Executive Assistant
8 for External Affairs.

9 CHAIRPERSON VALLONE: Okay. As
10 bleak a picture as you just painted, as, of
11 prosecuting these cases, I think it's actually not
12 bleak enough, because in, in one of your final
13 paragraphs you said that the, because of these
14 gaps, you are thus left with an "A" Misdemeanor
15 charge of assault in the third degree. I'm going
16 to put forth that many times you aren't, because
17 you also have the problems, as you know, and I
18 want you to expound on this, with a misdemeanor
19 charge of intent to cause physical injury, and of
20 actual proving the physical injury. So tell us a
21 little bit about the problems you have, even with
22 the "A" Misdemeanor.

23 LEROY FRASER: Yes, as you said,
24 and I think you alluded to it earlier, the Penal
25 Law defines physical injury as substantial pain,

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and if someone can be subject to strangulation, they may not have that substantial pain over an extended period of time, yet the act itself puts them very close to unconsciousness and/or death. And not only that, forget the definition in the Penal Law, case law as it is, has developed over the years, also holds serious physical injury and physical injury to a stronger standard to show that, that it's, where one is in substantial pain for a longer period of time. And as I just said, that does not always happen when someone is just denied air going to their brain for a short period of time.

CHAIRPERSON VALLONE: I'm going to, I want to welcome Council Member Garodnick, one of, one of our senior members, Public Safety Committee Members now. And go to Council Member Halloran for some questions.

COUNCIL MEMBER HALLORAN: Good morning, thank you for being here, appreciate it. Having worked on both sides of the aisle as a prosecutor and a defense attorney, I just have some language questions that maybe you could help me with in terms of application of a law like

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2 this. Given the definition provided by the state
3 of the, of the crime, it would also include
4 actions such as blocking the nose or mouth. You'd
5 agree with me that one of the most important and
6 difficult things to do as a prosecutor is prove
7 intent. And strangulation, as it's defined,
8 requires an intent to impede or otherwise
9 interfere with normal breathing. Don't you find a
10 possibility for a problem, say, in a schoolyard
11 fight, a kid puts another kid in a chokehold?
12 This statute could then be applied to that person
13 on that circumstances, because in fact the nose,
14 the mouth or the neck may become blocked or
15 impaired. And it's nothing more than two kids
16 duking it out in, in school. This statute would
17 apply to them just as much as it would apply to a
18 victim of domestic violence. Given the
19 construction of this statute.

20 LEROY FRASER: The way you have
21 described it, Councilman, it is clear that if in
22 fact someone is put in a chokehold and thereby
23 obstructs the victim's ability to breathe, you're
24 blocking the air, then it would fit within the
25 statute. I would just submit that that is where,

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as with a lot of the laws, prosecutorial
discretion comes into play.

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COUNCIL MEMBER HALLORAN: Okay.

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But you could certainly understand why, because
prosecutorial discretion is absolute, what you do
in New York County may not be what Judge Brown
does in Queens County, may not be what Dan Donovan
does in Staten Island County, applying the same
law, and that, that could of course create certain
issues down the road. You'd agree with me there,
right?

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LEROY FRASER: Well, I, I would

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just submit, respectfully, that the power,
prosecutorial discretion is not totally absolute,
because you have the checks and balances. It has
to go through the grand jury and also back through
the courts. And just as presently the courts have
limited the definitions and the actions in terms
of physical injury, that I would submit they will
come into play in that scenario also.

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COUNCIL MEMBER HALLORAN: Well,

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we'd hope so. And similarly, if someone merely
were to cup the mouth of someone to, say, quiet
them or whatnot, theoretically that could also,

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2 based on the definition given by the Penal Law
3 construction, be used to constitute the crime of a
4 misdemeanor strangulation in the third degree.

5 LEROY FRASER: Yes.

6 COUNCIL MEMBER HALLORAN: That
7 doesn't concern you at all in terms of the
8 statutory language being maybe perhaps too broad?

9 LEROY FRASER: I, I, my office
10 worked with and gave feedback to the drafters of
11 the legislation, and we are confident that, and
12 we're confident that the way it is now, it would
13 fit and aid into the prosecution's, and
14 substantially help, in terms of addressing,
15 prosecuting domestic violence. And so we are, we
16 do stand behind it.

17 COUNCIL MEMBER HALLORAN: I, I'm
18 all for prosecuting domestic violence, and I'm all
19 for anything that can help you do that. Again,
20 I'm just pointing out some of the potential
21 collateral issues which have absolutely nothing to
22 do with domestic violence--

23 LEROY FRASER: I got you.

24 COUNCIL MEMBER HALLORAN: --and the
25 prosecution of domestic violence, and that just

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concerns me as a practitioner of, of criminal law
on both sides of that aisle.

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LEROY FRASER: Yes, sir.

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COUNCIL MEMBER HALLORAN: Thank
you.

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CHAIRPERSON VALLONE: Thank you.
Mr. Fraser, you said you did work with the
crafters of this legislation in Albany?

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LEROY FRASER: In that they, the
bill was initially sent to our legislative office
and we did address it by giving some concerns to
it, and some of the things they accepted and some
of the things they didn't.

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CHAIRPERSON VALLONE: Are there any
improvements that you think could be made to the
law that perhaps they didn't accept?

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LEROY FRASER: Not willing, not at
this time, now.

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CHAIRPERSON VALLONE: Okay, Council
Member Greenfield has some questions.

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COUNCIL MEMBER GREENFIELD: Yeah,
thank you for your testimony. Here's my question.
Can you give a sort of a practical example of the
application of when this law would come into play?

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2 All right, you see this, in your office, you see
3 this all the time, so, you know, what, what are,
4 what are the stats in terms of women are coming
5 in, you're trying to, you're trying to arrest the
6 offender, and you can't, or you're not able to put
7 them away. Do you have some sort of statistics in
8 terms of what the numbers is, and what, what, how
9 this would prevent future--What particularly
10 interests me is the, the stats on how this would
11 prevent increased violence down the road. Sort of
12 how this is like a stopgap.

13 LEROY FRASER: Yes, well, well I
14 don't have the stats, but what I--the, an example
15 of this coming into effect and being useful is
16 where a victim who is strangled, may even pass out
17 for a short period of time, but they don't have
18 physical injury. A lot of times during the act of
19 strangulation, what happens is as a result of the
20 air being cut off, there is a injury called, I'm
21 going to mispronounce it, pistachio, pistachi--
22 something like that, I'm sure someone over there
23 knows it, but it's where the blood corpuscles sort
24 of break and, and sort of provide little pink dots
25 in ones face. And while, and they last for a

1 short period of time, they don't cause a lot of
2 pain, but in fact they're, so they're not enough
3 for physical injury, and then they'll go away.
4 With this particular statute, we would be able to
5 charge it, although the physical injury wasn't
6 there. But the, one of the most glaring examples
7 that I can give is a article that was just out,
8 either, it was late last week, about what happened
9 in New Hampshire where they were about to, they
10 were about to look at a strangulation law just
11 like this. And unfortunately, it was a article on
12 the internet, and they had a picture of two people
13 who were testifying. And one picture painted a
14 thousand words, and that was the parents of a
15 deceased victim of domestic violence. And that
16 was where the person was arrested, they were only
17 able to charge a misdemeanor for assault, and
18 because of that no bail was set. Once the low
19 bail was set, the defendant was able to make bail
20 and come by and then shoot the victim. And the
21 look on the face of the parents who were asking
22 for the strangulation bill, with a felony charge
23 you're able to get higher bail, and perhaps he,
24 the defendant would've made it there, but the
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2 higher bail and looking at a history of it, would
3 allow for further protection of the, of victim,
4 and to, another measure to try and prevent the
5 escalation that I talked about in my testimony
6 from the study that was done in Chicago.

7 COUNCIL MEMBER GREENFIELD: Oh, I
8 agree, so my, my question would be, and maybe you
9 don't have it, but I think it would be worthwhile,
10 is that I think there's some quarter million
11 domestic violence incidents in New York City each
12 year. And so, perhaps you have some stats on, on
13 situations where, where women had come in
14 initially because of strangulation, and as a
15 result of you being unable to effectively
16 prosecute that, unfortunately, things were
17 escalated, I think it would, it would help prove
18 your case. If you could provide us with some of
19 that, even down the road, I think it would be
20 helpful.

21 LEROY FRASER: Yes, sir.

22 COUNCIL MEMBER GREENFIELD: Thank
23 you.

24 CHAIRPERSON VALLONE: Thank you.
25 And I want to address one of Council Member

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Halloran's concerns. You mentioned that placing the hand over someone's mouth to quiet them might be covered by this, because it was too broad. That's not the way I read it, and I want to hear your impression of this. First of all, you have to intentionally impede the normal breathing, which I would read as intent to impede breathing, as opposed to keeping quiet. Not that I'm at all advocating for keeping quiet, but just for the purposes of this legal discussion. Intentionally impede the breathing, but it also says "by suffocating." So, I don't believe that covering mouth would ever be considered suffocating, unless the nose is also covered, and then we're into a whole different area. But I want to get your opinion on that.

 LEROY FRASER: Yeah, I mean, you have to look at the act, the total act itself. If it's done for a short period of time, and, and it's not actually intending to suffocate someone, that's one thing, as opposed to actually trying for a moment to tell someone to be quiet. I think that telling someone to be quiet, if that's the intent, and again, you have to look at the intent,

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2 and intent is always difficult to prove. And as
3 you well know, both of you, from your practice of
4 criminal law, that intent has to be proven by the
5 totality of the circumstances.

6 CHAIRPERSON VALLONE: We've also
7 been joined by Council Member Dilan. And we will
8 be voting on this very soon. Have we--? [pause]
9 Is there a Laurel Eisner in the room? From
10 Sanctuary for Families? We were told she was
11 here, but she's not. Okay. [pause] Okay, we do
12 have a--does anyone else have any question for the
13 Manhattan District Attorney's Office? No? Thank
14 you, Leroy.

15 LEROY FRASER: Thanks.

16 CHAIRPERSON VALLONE: Well, we have
17 a quorum of five, we're going to call for a vote
18 on this measure, and then if Sanctuary for
19 Families comes in, we will be taking question
20 member, questions from them. Julissa Ferreras
21 points out that we're voting by all men. [laughs]
22 I don't know if that's, that's a good thing,
23 today. It's--

24 CLERK: Council Member Vallone.

25 CHAIRPERSON VALLONE: I vote aye.

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CLERK: Council Member Dilan.

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COUNCIL MEMBER DILAN: I vote aye.

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CLERK: Council Member Garodnick.

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COUNCIL MEMBER GARODNICK: Aye.

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CLERK: Council Member Greenfield.

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COUNCIL MEMBER GREENFIELD: Aye.

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CLERK: Council Member Halloran.

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COUNCIL MEMBER HALLORAN: I guess

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as the ranking Republican present, I have to vote

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aye.

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CLERK: We're holding the vote open

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for 30 minutes. As of right now, the vote is

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passing by a vote of five to zero.

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CHAIRPERSON VALLONE: There are

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some members, I'm told, are on their way, and

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would like to vote, and we're going to hold it

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open as long as we, as we legally can. - -

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[pause] Okay, well this Laurel Eisner from

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Sanctuary for Families was scheduled to testify.

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Apparently is in the building but not here, so if

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she does come, we'll take her testimony and add it

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to the record, because it will be open for another

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30 minutes. There is no one else who is scheduled

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to testify. Normally, hearings don't go this,

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2 this quickly or easily, but I think it's because
3 everyone is in agreement that this is something
4 that needs to be done. And as I said, we acted
5 quick--as quickly as we possibly could down here
6 in the City, to tell the New York, to commend the
7 Senate for acting and passing this yesterday. And
8 to tell Albany, to tell the Assembly, that we need
9 them to pass this as soon as possible, and give
10 our police and our prosecutors the tools they need
11 to adequately prosecute domestic violence, and
12 close this, this dangerous loophole that exists.
13 I want to thank everyone for, for coming down
14 today. And this meeting will be adjourned. Thank
15 you all. [gavel] Let me just quickly mention we
16 had a, a representative from the Brooklyn DAs
17 here, who, Brooklyn DA who was monitoring the, the
18 hearing for us, who also supports this; and
19 someone from Council Member, from, from Public
20 Advocate De Blasio's office.

21 [pause, background noise]

22 CLERK: --Member Ulrich.

23 COUNCIL MEMBER ULRICH: I vote aye.

24 [pause]

25 CLERK: Council Member Gennaro.

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COUNCIL MEMBER GENNARO: Yes.

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[pause]

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CLERK: Council Member Foster.

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COUNCIL MEMBER FOSTER: Yes.

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CLERK: The Resolution is adopted

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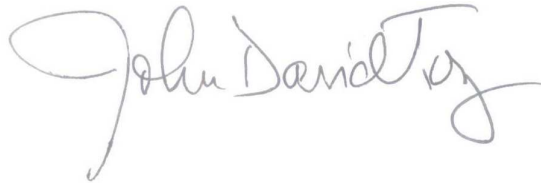
by a vote of eight-zero, and the meeting is

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adjourned.

C E R T I F I C A T

I, JOHN DAVID TONG, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

A handwritten signature in cursive script that reads "John David Tong". The signature is written in a dark ink and is positioned above a horizontal line.

Signature_____

Date June 23, 2010