

ORDINANCE NO. 2003-3417

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 18, "PS PERFORMANCE STANDARD DISTRICT," SEC. 142-693, "PERMITTED USES," BY RESTRICTING OUTDOOR ENTERTAINMENT ESTABLISHMENTS AND OPEN AIR ENTERTAINMENT ESTABLISHMENTS IN THE R-PS4, RESIDENTIAL HIGH DENSITY PERFORMANCE STANDARDS AND C-PS 1, 2, 3 AND 4, COMMERCIAL PERFORMANCE STANDARDS ZONING DISTRICTS; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the residents of the area known as the "PS Performance Standards District," believe their quality of life is being diminished; and

WHEREAS, the noise emanating from entertainment establishments in the area known as the "PS Performance Standards District," is the source of the noise pollution in the area and is one of the major influences in the diminishing quality of life in that area of the City; and

WHEREAS, the residents of the area known as the "PS Performance Standards District," have petitioned the City Commission to take affirmative action in restoring their quality of life.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA.

Section 1. That Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 18, "PS Performance Standard District," is hereby amended as follows:

Sec. 142-693. Permitted Uses.

(a) The following uses are permitted in the performance standard district.

General Use Category	R-PS 1, 2	R-PS 3, 4	C-PS 1, 2, 3, 4	RM-PS1
Single-family; townhome; apartment; apartment/hotel	P	P	P	P Apartment/hotel not permitted
Hotel	N	P	P	N
Commercial	N	N	P	P 8% of floor area
Institutional	C	C	C	C 1.25% of Floor Area
Accessory outdoor bar counters, provided that the accessory outdoor bar counter is not operated or utilized between midnight and 8:00 a.m.; however, for an accessory outdoor bar counter which is adjacent to a property with an apartment unit, the accessory outdoor bar counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.	N	N However, accessory outdoor bar counters are permitted in oceanfront hotels with at least 100 hotel units in the R-PS4 district.	P*	N
Outdoor entertainment establishments, and open air entertainment establishment, neighborhood impact establishments	N	N However, in the R-PS4 district, these uses are permitted as accessory uses in oceanfront hotels with 250 or more hotel units with access to the establishment only from the interior lobby and not from the street.	C* N	N
Neighborhood impact establishments	N	N However, in the R-PS4 district, this use is permitted, as an accessory use in oceanfront hotels with 250 or more hotel units, as a Conditional Use. Access to the establishment shall be only from the interior lobby of the hotel and not from the street.	C	N

P--Main permitted use

C--Conditional use

N--Not permitted

* -- Accessory use only

Floor area in the RM-PS1 district refers to total floor area in project. Commercial uses in RM-PS1 limited to stores and restaurants.

- (b) For purposes of this section, a car wash, filling station and any use that sells gasoline, automobiles or automotive or related repair uses are considered as industrial uses and are not permitted in the redevelopment area.
- (c) For purposes of this section, pawnshops and dance halls and entertainment establishments not also operating as alcoholic beverage establishments and restaurants with full kitchens and serving full meals are not permitted as a main permitted or accessory use in the redevelopment area; however, in the C-PS3 and C-PS4 districts dance halls and entertainment establishments shall be permitted as an accessory use within a hotel of 250 rooms or more as a Conditional Use. ~~with a~~Access to the dance hall or entertainment establishment shall be only from the interior lobby of the hotel and not from the street.

Section 2. Repeal

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 3. Severability

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

Section 4. Codification

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the work "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. Effective Date

This ordinance shall take effect 10 days after adoption.

Passed and adopted this 11th day of June, 2003.




VICE-MAYOR

ATTEST:


City Clerk

First Reading: May 21, 2003
Second Reading: June 11, 2003

Approved As To Form
And Language
And For Execution


City Attorney  5-30-03
Date

Verified by: _____
Jorge G. Gomez, AICP
Planning Director

Underscore denotes new language
~~Strikethrough~~ denotes deleted language
F:\PLAN\PLB\draft ordinances\1608 ent estbl in RPS4 & CPS ord.doc(1st version)

**CITY OF MIAMI BEACH
COMMISSION ITEM SUMMARY**



Condensed Title:

An ordinance of the Mayor and City Commission amending restricting outdoor entertainment establishments and open air entertainment establishments in the Redevelopment Area.

Issue:

- Should the City Commission:
1. Prohibit outdoor and open air entertainment establishments in the Redevelopment area?
 2. Allow neighborhood impact establishments in the R-PS4 and C-PS districts as conditional uses?

Item Summary/Recommendation:

Currently, the outdoor entertainment establishments, open air entertainment establishments and neighborhood impact establishments are not permitted in the R-PS 1, 2 and 3 districts. These uses, however, are permitted in the R-PS4 as accessory uses only in hotels with 250 units or more, with access from the lobby and not from the street. The outdoor entertainment, open air entertainment and neighborhood impact establishments are currently permitted in the C-PS 1, 2, 3 and 4 districts as conditional uses.

The proposed ordinance would prohibit the outdoor and open air entertainment except in the R-PS4 as accessory uses in oceanfront hotels and would allow the neighborhood impact establishments in the R-PS4 and C-PS districts as conditional uses.

The Administration recommends that the City Commission approve the proposed amendment.

Advisory Board Recommendation:

At the March 25, 2003 meeting, the Planning Board passed a motion 6-0, with one member absent) recommending that the City Commission approve the proposed ordinance.

Financial Information:

Source of Funds:	Amount	Account	Approved
<div style="border: 1px solid black; width: 40px; height: 40px; display: inline-block;"></div> Finance Dept.	1		
	2		
	3		
	4		
	Total		

City Clerk's Office Legislative Tracking:

Mercy Lamazares/Jorge G. Gomez, Planning Department

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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AGENDA ITEM RS4
DATE 6-11-03

CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139
www.miamibeachfl.gov



COMMISSION MEMORANDUM

To: Mayor David Dermer and
Members of the City Commission

Date: June 11, 2003

From: Jorge M. Gonzalez *J. Pacheco for*
City Manager

Second Reading – Public Hearing

Subject: Restriction of outdoor and open air entertainment in R-PS and C-PS districts.

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 18, "PS PERFORMANCE STANDARD DISTRICT," SEC. 142-693, "PERMITTED USES," BY RESTRICTING OUTDOOR ENTERTAINMENT ESTABLISHMENTS AND OPEN AIR ENTERTAINMENT ESTABLISHMENTS IN THE R-PS4, RESIDENTIAL HIGH DENSITY PERFORMANCE STANDARDS AND C-PS 1, 2, 3 AND 4, COMMERCIAL PERFORMANCE STANDARDS ZONING DISTRICTS; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

ADMINISTRATION RECOMMENDATION

The Administration recommends that the City Commission adopt the proposed ordinance as modified on first reading.

BACKGROUND

At the January 8, 2003 meeting, the City Commission held a long discussion which included public participation relative to the issue of noise emanating from clubs and restaurants in the South Pointe area. Among several other locations discussed, more specifically, the Commission talked about the noise emanating from Opium Gardens (f/k/a Amnesia), located on Collins Avenue between First and Second Streets. The end result of this Commission meeting was a directive to the Planning Department to draft an ordinance for review by the Planning Board that would prohibit any more open-air entertainment establishments in the C-PS zoning districts.

ANALYSIS

The following terms are very commonly used in the City Code. They are offered here as a tool to understand how they are used in this report and in the legislation that is being

proposed at this time. These terms are defined terms in the Land Development Regulations of the Code:

Accessory use means a subordinate use which is incidental to and customary in connection with the main building or use and which is located on the same lot with such main building or use.

Entertainment means any live show or live performance or music amplified or nonamplified. Exceptions: Indoor movie theater; big screen television and/or background music, amplified or nonamplified, played at a volume that does not interfere with normal conversation.

Dance hall means a commercial establishment where dancing by patrons is allowed, including, but not limited to, restaurants, alcoholic beverage establishments and entertainment establishments.

Entertainment establishment means a commercial establishment with any live or recorded, amplified or nonamplified performance, (excepting television, radio and/or recorded background music, played at a volume that does not interfere with normal conversation and indoor movie theater operations). Entertainment establishments may not operate between the hours of 5:00 a.m. and 10:00 a.m., except as provided for under subsection 6-3(3)(b).

Neighborhood impact establishment means:

(1) An alcoholic beverage establishment or restaurant, not also operating as an entertainment establishment or dance hall (as defined in section 114-1), with an occupant content of 300 or more persons as determined by the chief fire marshal; or

(2) An alcoholic beverage establishment or restaurant, which is also operating as an entertainment establishment or dance hall (as defined in section 114-1), with an occupant content of 200 or more persons as determined by the chief fire marshal.

Open air entertainment establishment means a commercial establishment which provides entertainment, as defined in this section, indoors or in an enclosed courtyard or area which by its design is open to the outside, thereby enabling the entertainment to be audible outdoors.

Outdoor entertainment establishment means a commercial establishment which provides outdoor entertainment as defined in this section.

Currently, the outdoor entertainment establishments, open air entertainment establishments and neighborhood impact establishments are not permitted in the R-PS 1, 2 and 3 districts. These uses, however, are permitted in the R-PS4 as accessory uses only in hotels with 250 units or more, with access from the lobby and not from the street. The

Commission Memorandum

Restriction of outdoor and open air entertainment in R-PS and C-PS districts

June 11, 2003

Page 3 of 5

outdoor entertainment, open air entertainment and neighborhood impact establishments are currently permitted in the C-PS 1, 2, 3 and 4 districts as conditional uses.

The following table lists existing establishments in the redevelopment area, which are licensed as restaurants or a combination of restaurant/bar serving alcoholic beverages until 2:00 a.m. or 5:00 a.m., and some also include a dance and entertainment component in the license:

ADDRESS		NAME	RESTAURANTS	2:00 a.m.	5:00 a.m.	DANCE/ENT.
840	1 ST STREET	DAILY BREAD	X			
124	2 ND STREET	SO FI HIDEAWAY	X			
300	ALTON RD	MONTY'S	X		X	X
227	BISCAYNE ST	JOE'S STONE CRAB	X			
100	COLLINS AVE	THE ROOM	X		X	
100	COLLINS AVE	SHOJI SUSHI	X			
100	COLLINS AVE	NEMO	X	X		
124	COLLINS AVE	LA FACTORIA	X		X	
136	COLLINS AVE	OPIUM GARDENS	X		X	X
157	COLLINS AVE	BIG PINK	X		X	
1	OCEAN DRIVE	PENROD'S	X		X	X
36	OCEAN DRIVE	TAVERNA OPA	X		X	X
150	OCEAN DRIVE	PURE LOUNGE/JOIA	X		X	
161	OCEAN DRIVE	M.B. MARIOTT	X	X		
350	OCEAN DRIVE	GREEN COMET	X			
444	OCEAN DRIVE	OCEAN FIVE BISTRO	X	X		
455	OCEAN DRIVE	THE SAVOY	X	X		
1000	SO. POINTE DR	LA PIAGGIA	X	X		
500	SO. POINTE DR	FLUTE CHAMPAGNE	X		X	
1	WASHINGTON AV	SMITH & WOLLENSKY	X		X	
235	WASHINGTON AV	ODYSSEY	X		X	
347	WASHINGTON AV	HOTEL ST. AUGUSTINE		X		
404	WASHINGTON AV	CHINA GRILL	X	X		
411	WASHINGTON AV	CLUB IBIZA	X		X	X
413	WASHINGTON AV	LA LOCANDA	X			
419	WASHINGTON AV	L'ENTRECOTE	X		X	X
433	WASHINGTON AV	TUSCANY	X	X		

Of the restaurants listed above, the only one that is presently an outdoor/open air entertainment establishment is Opium Gardens. Monty's has an outdoor stage-like structure that has been approved for some time, thus would not be affected by the proposed regulations. China Grill, Taverna Opa, and Penrod's (except that portion of the

outdoor space that is included in the original lease with Penrod's) have outdoor spaces which could potentially be affected by the proposed regulations.

Presently, the narrowly defined circumstance when the entertainment provided in an outdoor area is played at a volume that interferes with normal conversation, but below a level that would violate the Dade County Noise Ordinance (21-28), qualifies as a Conditional Use. Passage of the proposed ordinance would limit entertainment to background music, amplified or non-amplified, played at a level that does not interfere with normal conversation.

This ordinance addresses only one component of a complex set of issues. The Administration will continue to analyze the development regulations and propose further amendments to fine tune the balance between the interests of the entertainment industry and the quality of life of the City's residential neighborhoods.

Following the direction of the City Commission to ban all outdoor and open air entertainment, the attached ordinance proposes to prohibit outdoor entertainment and open-air entertainment establishments in the R-PS4, where it is currently permitted as accessory use to an oceanfront hotel and in C-PS1, 2, 3 and 4 districts, where it is permitted as a conditional use. The proposed ordinance would allow neighborhood impact establishments in the R-PS4 as accessory use to an oceanfront hotel with 100 rooms or more as well as in the C-PS districts, but only as conditional uses only. The rationale for 100 rooms is derived from Chapter 561 of the Florida Statutes, wherein there is a limit on the number of alcoholic licenses that the State of Florida will issue based on the population of the county. However, Section 561.20(2)(a)1. states that "No such limitation of the number of licenses... shall prohibit the issuance of a special license to any bona fide hotel, motel or motor court ...of no fewer than 100 guest rooms in any county having a population of 50,000 residents or greater..." Thus it is apparent that a liquor license could be construed as the rational nexus for a greater size accessory use restaurant in hotels that have 100 or more hotel rooms.

The information shown in the table below was extracted from the current Occupational License database. The four hotels below are the only licensed ones located in the R-PS4 zoning district, which is the district located east of Ocean Drive, south of 5th Street.

ADDRESS	NAME OF HOTEL	NUMBER OF ROOMS
125 OCEAN DR	VILLA LUISA HOTEL	50
161 OCEAN DR	MIAMI BEACH MARRIOTT @ SOUTH B	236
425 OCEAN DR	ARDEN SAVOY PARTNERS, LLC	74
455 OCEAN DR	THE SAVOY ON SOUTH BEACH	40

The Bentley Beach at 101 Ocean Drive is still under construction, but initially proposed with 98 hotel rooms. The Continuum, which is located at the terminus of So. Pointe Drive is

also within the R-PS4 district. The phase 1 of this project is still under construction and initially proposed as a 400-unit condominium building with 180 hotel rooms. This project is also on the oceanfront.

PLANNING BOARD ACTION

At the March 25, 2003 meeting, the Planning Board recommended by a vote of 6-0 (one member absent) that the City Commission approve the proposed ordinance.

CITY COMMISSION ACTION

Although the City Commission could not take any action with regard to the proposed ordinance at the April 30, 2003 meeting, there was a long and vociferous presentation by members of the public in opposition to further regulations of the nightlife industry. In addition, there was a request made by the representative of the Arlington-Savoy hotel to allow neighborhood impact establishments as a conditional use in the R-PS4 zoning district for hotels with 100 rooms or more.

At the May 21, 2003 meeting, the Commission reviewed an ordinance that incorporated the request by the representative of the Arlington-Savoy hotel. Although the Commission approved the ordinance on first reading, requested that it be amended before the second reading public hearing to reflect that outdoor and open air entertainment establishments would not be allowed in the R-PS4 zoning district. The Commission also requested that the revised ordinance reflect that the threshold for hotels in the R-PS4 district that could apply for a neighborhood impact establishment is returned to the original 250 rooms.

CONCLUSION

Pursuant to Section 118-164 (2) a. of the City Code, the City Commission must hold two advertised public hearings on this proposed ordinance, which changes the actual list of permitted, conditional or prohibited uses within the Performance Standards districts. At least one of the public hearings must be held after 5:00 p.m.

The first public hearing must be advertised at least 7 days before the hearing date; the second public hearing must be advertised at least 5 days before the hearing date. The Commission may adopt the proposed amendment by a 5/7ths vote immediately after the second public hearing.

JMG\CMC\JGG\ML

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 18, "PS PERFORMANCE STANDARD DISTRICT," SEC. 142-693, "PERMITTED USES," BY RESTRICTING OUTDOOR ENTERTAINMENT ESTABLISHMENTS AND OPEN AIR ENTERTAINMENT ESTABLISHMENTS IN THE R-PS4, RESIDENTIAL HIGH DENSITY PERFORMANCE STANDARDS AND C-PS 1, 2, 3 AND 4, COMMERCIAL PERFORMANCE STANDARDS ZONING DISTRICTS; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the residents of the area known as the "PS Performance Standards District," believe their quality of life is being diminished; and

WHEREAS, the noise emanating from entertainment establishments in the area known as the "PS Performance Standards District," is the source of the noise pollution in the area and is one of the major influences in the diminishing quality of life in that area of the City; and

WHEREAS, the residents of the area known as the "PS Performance Standards District," have petitioned the City Commission to take affirmative action in restoring their quality of life.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA.

Section 1. That Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 18, "PS Performance Standard District," is hereby amended as follows:

Sec. 142-693. Permitted Uses.

(a) The following uses are permitted in the performance standard district.

General Use Category	R-PS 1, 2	R-PS 3, 4	C-PS 1, 2, 3, 4	RM-PS1
Single-family; townhome; apartment; apartment/hotel	P	P	P	P Apartment/hotel not permitted
Hotel	N	P	P	N
Commercial	N	N	P	P 8% of floor area
Institutional	C	C	C	C 1.25% of Floor Area
Accessory outdoor bar counters, provided that the accessory outdoor bar counter is not operated or utilized between midnight and 8:00 a.m.; however, for an accessory outdoor bar counter which is adjacent to a property with an apartment unit, the accessory outdoor bar counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.	N	N However, accessory outdoor bar counters are permitted in oceanfront hotels with at least 100 hotel units in the R-PS4 district.	P*	N
Outdoor entertainment establishments, and open air entertainment establishment, neighborhood impact establishments	N	N However, in the R-PS4 district, these uses are permitted as accessory uses in oceanfront hotels with 250 or more hotel units with access to the establishment only from the interior lobby and not from the street.	C* N	N
<u>Neighborhood impact establishments</u>	N	N However, in the R-PS4 district, this use is permitted, as an accessory use in oceanfront hotels with 250 or more hotel units, as a Conditional Use. Access to the establishment shall be only from the interior lobby of the hotel and not from the street.	C	N

P--Main permitted use

C--Conditional use

N--Not permitted

* -- Accessory use only

Floor area in the RM-PS1 district refers to total floor area in project. Commercial uses in RM-PS1 limited to stores and restaurants.

- (b) For purposes of this section, a car wash, filling station and any use that sells gasoline, automobiles or automotive or related repair uses are considered as industrial uses and are not permitted in the redevelopment area.
- (c) For purposes of this section, pawnshops and dance halls and entertainment establishments not also operating as alcoholic beverage establishments and restaurants with full kitchens and serving full meals are not permitted as a main permitted or accessory use in the redevelopment area; however, in the C-PS3 and C-PS4 districts dance halls and entertainment establishments shall be permitted as an accessory use within a hotel of 250 rooms or more as a Conditional Use, with ~~a~~ Access to the dance hall or entertainment establishment shall be only from the interior lobby of the hotel and not from the street.

Section 2. Repeal

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 3. Severability

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

Section 4. Codification

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the work "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. Effective Date

This ordinance shall take effect 10 days after adoption.
Passed and adopted this _____ day of _____, 2003.

MAYOR

ATTEST:

City Clerk

First Reading:
Second Reading:

Approved As To Form
And Language
And For Execution

M. J. Dull

City Attorney *JH* 5-30-03
Date

Verified by: _____
Jorge G. Gomez, AICP
Planning Director

Underscore denotes new language
~~Strikethrough~~ denotes deleted language
F:\PLAN\PLB\draft ordinances\1608 ent estbl in RPS4 & CPS ord.doc(1st version)

**Revised Notice
CITY OF MIAMI BEACH
NOTICE OF A PUBLIC HEARING**



NOTICE IS HEREBY given that a public hearing will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, June 11, 2003, at 5:01 p.m.**, to consider the following:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 18, "PS PERFORMANCE STANDARD DISTRICT," SEC. 142-693, "PERMITTED USES," BY RESTRICTING OUTDOOR ENTERTAINMENT ESTABLISHMENTS AND OPEN AIR ENTERTAINMENT ESTABLISHMENTS IN THE R-PS4, RESIDENTIAL HIGH DENSITY PERFORMANCE STANDARDS AND C-PS 1, 2, 3 AND 4, COMMERCIAL PERFORMANCE STANDARDS ZONING DISTRICTS, PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

Inquiries may be directed to the Planning Department at (305) 673-7550.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in this proceeding, or to request information on access for persons with disabilities, or to request this publication in accessible format, or to request sign language interpreters, should contact the City Clerk's office at (305) 673-7411, no later than four days prior to the proceeding. If hearing impaired, contact the City Clerk's office via the Florida Relay Service numbers, (800) 955-8771 (TTY) or (800) 955-8770 (VOICE).

Ad #0179R

29 THURSDAY, JUNE 5, 2003 The Herald www.herald.com

IN RE: CITY OF MIAMI BEACH COMMISSION MEETING

ITEM NO.: ITEM R5D PUBLIC HEARING

CITY OF MIAMI BEACH
COMMISSION MEETING

MAY 21, 2003

ITEM R5C PUBLIC HEARING

RESTRICTION OF OUTDOOR/OPEN AIR ENTERTAINMENT
IN R-PS AND C-PS DISTRICTS

1 COMMISSION MEMBERS:

- 2 DAVID DERMER, MAYOR
- 3 LUIS R. GARCIA, JR., VICE MAYOR
- 4 SAUL GROSS, COMMISSIONER
- 5 SIMON CRUZ, COMMISSIONER
- 6 MATTI HERRERA BOWER, COMMISSIONER
- 7 JOSE SMITH, COMMISSIONER
- 8 RICHARD STEINBERG, COMMISSIONER

6

ALSO PRESENT:

7

- 8 MR. GOMEZ GONZALEZ, CITY MANAGER
- 9 MURRAY DUBBIN, CITY ATTORNEY
- 10 ROBERT E. PARCHER, CITY CLERK
- 11 MR. GOMEZ GOMEZ, PLANNING DEPARTMENT

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1 (Thereupon:)

2 MAYOR DERMER: All right. This is
3 230 R5C, restriction of outdoor/open air
4 entertainment in R-PS and CP-S districts,
5 first reading. Please read the ordinance.

6 THE CLERK: An ordinance of the
7 Mayor and the City Commission of the City
8 of Miami Beach, Florida, amending the land
9 development regulations of the code of the
10 City of Miami Beach by amending
11 Chapter 142, zoning districts and
12 regulations, Article 2, district
13 regulations division 18, PS performance
14 standards; Section 142-693, prohibited
15 uses.

16 By modifying the regulations for
17 neighborhood impact establishments in the
18 R-PS4 zoning districts and restricting
19 outdoor entertainment establishments and
20 open air entertainment establishments in
21 the R-PS4 residential high density
22 performance standard and C-PS1, 2, 3, and 4
23 commercial performance standard zoning
24 district providing for repeal or
25 codification, severability, and an

1 effective date.

2 MAYOR DERMER: Okay. Jorge, would
3 you like to present this. Travel mic,
4 travel mic, we're on travel mic.

5 MR. GOMEZ: Thanks.

6 MAYOR DERMER: Thank you, sir.

7 MR. GOMEZ: I gave the commission a
8 presentation, and I just want to just
9 refresh your minds, so I'm going to go
10 rather quickly, and then just if there's
11 any questions, I'll go about it.

12 What this map shows is all the areas
13 in the entire City of Miami Beach that
14 allow outdoor entertainment. The green
15 areas, it's allowed as a conditional use.
16 The red areas or the pink areas are the
17 areas of the city that the commission has
18 already made a determination that outdoor
19 entertainment is not appropriate within the
20 context of those areas.

21 And generally it's because these are
22 areas that allow hotel development but
23 they're in smaller less -- less intensive
24 areas of the city that are surrounded by
25 more residence -- multifamily residential,

1 so you've excluded them from areas such as
2 Indian Creek Drive, the area around Collins
3 Avenue and 63rd Street on the
4 non-oceanfront side, the areas of -- in
5 between Indian Creek and Collins between
6 24th and 44th Street, the area around the
7 museum district and the area around West
8 Avenue.

9 You've also excluded them already,
10 outdoor entertainment is not allowed in the
11 South Pointe area in all of the residential
12 zone areas.

13 The yellow areas in this map are the
14 commercial districts in South Pointe, which
15 is the subject of the proposed ordinance.
16 The proposed ordinance would also eliminate
17 outdoor entertainment in all the commercial
18 districts in South Pointe, which is the
19 area south of 6th Street. It's the 5th
20 Street corridor basically, and then the
21 commercial corridor that's between Biscayne
22 Street and 1st Street from basically Alton
23 to Collins Avenue.

24 The other part of the ordinance
25 which came up as a request at the last

1 public hearing, Mr. Bercow pointed out that
2 neighborhood impact establishments, now,
3 these are indoor entertainment venues that
4 go above a threshold, and it's either a
5 restaurant with 300 occupancy or a
6 restaurant with entertainment of 200
7 occupancy or greater are designated as
8 neighborhood impact establishments, and
9 they are -- they are listed still as
10 conditional uses in all the commercial
11 areas, those yellow areas on the map, but
12 they were -- currently the existing
13 regulations does not permit them in the
14 residential areas unless it's associated
15 with a hotel with 250 units or more.

16 Mr. Bercow came to you and suggested
17 that perhaps that ought to be modified.
18 We did some research and modified the
19 ordinance, and we're proposing that the --
20 you can leave the neighborhood impact
21 establishments as accessory to hotel
22 through a conditional use approval in the
23 R-PS3 and 4 areas if the hotel has a
24 minimum of 100 units.

25 The 100 unit count comes from a

1 state statute that we found that requires a
2 different type of liquor license. It's one
3 of the thresholds that the state uses for
4 liquor licenses. So there's those two
5 components of the proposed ordinance, one
6 deals with just the outdoor entertainment
7 in the commercial districts, which would
8 ban them, this would be -- this would
9 prohibit them, and it changes the -- for
10 oceanfront hotels, it changes the standard
11 in the R-PS4 district, I misspoke earlier
12 when I said R-PS3 and 4, it's just the
13 R-PS4, which is the oceanfront district,
14 you can have a neighborhood impact
15 establishment, that's just an indoor
16 establishment, if the hotel has 100 units
17 or more.

18 That, in essence, is the gist of
19 this ordinance. If there's any questions,
20 I'll gladly answer them now.

21 MAYOR DERMER: Okay. Any questions
22 from the commission?

23 Hearing none, I have a motion to
24 open the public hearing. Public hearing is
25 now open. Can we please remove that board,

1 Jorge, and let us begin. First speaker --
2 I'm going by the people that had signed up
3 to speak previous, and then we'll go to
4 today's speaker list.

5 COMMISSIONER BOWER: Is there
6 another presentation coming or can this
7 come out.

8 MAYOR DERMER: No, that is from the
9 presentations coming after this.

10 COMMISSIONER BOWER: After this,
11 okay.

12 MAYOR DERMER: Solidad Awaad,
13 Solidad, please, are you present? Welcome.

14 UNIDENTIFIED SPEAKER: (Inaudible.)

15 MAYOR DERMER: Okay. We'll go --
16 we'll get back to you. Don't worry, Frank.

17 MS. AWAAD: Hello, my name is
18 Soledad Awaad. I live at the Murano
19 Portofino building. Mayor Dermer and city
20 commissioners, I'm a little nervous, sorry.

21 MAYOR DERMER: Take your time.

22 MS. AWAAD: First of all, I would
23 like to thank you for giving us the
24 opportunity to voice our concerns in this
25 hearing.

1 MAYOR DERMER: Solidad, hang on one
2 second. I did misspeak. It's two minutes
3 for every speaker.

4 MS. AWAAD: Okay.

5 MAYOR DERMER: I said take your
6 time, but so we can make our way through
7 the volume of speakers.

8 MS. AWAAD: Yes.

9 MAYOR DERMER: If you can do
10 it within two minutes, I'd appreciate it.

11 MS. AWAAD: Yes, I can.

12 MAYOR DERMER: Thank you.

13 MS. AWAAD: I would like to read an
14 email that my husband sent to you a few
15 days ago. His name is Robert Awaad, and
16 unfortunately he couldn't come today
17 because of his work, so let me read this to
18 you.

19 "We are new residents living at 1000
20 South Pointe Drive at the Murano at
21 Portofino building in the residential
22 neighborhood of South Pointe. My wife
23 Solidad," that's me, "is giving birth to
24 our first child next month. It will be the
25 first baby born at the Murano Portofino,

1 and we hope not the last one.

2 Our friends think it's completely
3 insane that we plan to continue living in
4 South Beach after our daughter is born.
5 They recommend we move to a more quiet
6 oriented places like Key Biscayne or Coral
7 Gables. This is not what we would like to
8 do, because we like living at Miami Beach,
9 being close to the cinema, to restaurants,
10 and the beach.

11 However, if this ordinance is not
12 passed, the message from the commission
13 will be very clear, South Pointe at South
14 Beach is not a place for working families
15 with kids that need to sleep at night,
16 therefore, we're in full support of the
17 ordinance approved by the planning board
18 that bans outdoor entertainment in
19 commercial zones and nightclubs in
20 residential zones.

21 Please respect this growing
22 neighborhood and our growing family by
23 ensuring that this ordinance is passed.
24 We hope you prove our friends wrong.
25 Sincerely, me and my husband."

1 MAYOR DERMER: Thank you, Solidad
2 for your comments. Let us move to Frank
3 Del Vecchio, please. Welcome, Frank.

4 MR. DEL VECCHIO: Frank Del Vecchio,
5 31 Ocean Drive. I will be brief, and what
6 I say is really directed not only to the
7 commission and the residential community,
8 but to our community, our business
9 community, and our nightlife community. So
10 let me -- let me say it in a non-lawyerly
11 kind of way.

12 People are upset by change. We --
13 we live -- we're living in a time of
14 change. The country is changed, South
15 Beach has changed, and the South Pointe
16 area has totally changed due to residential
17 development. This is an extremely positive
18 change. It is one to be supported, and
19 it is one that the planning board
20 recognized should be supported. It's good
21 planning to have a vital residential area
22 with more investment in it.

23 The economic engine for South Beach
24 besides the climate and the ocean was a
25 combination of historic preservation, a

1 walking environment, and nightlife, but the
2 economic downturn complicated by 911 poses
3 a new challenge. What is being handed the
4 business community in Miami Beach and South
5 Beach is a new engine of economic growth,
6 which is to the good. It is residential
7 development.

8 Let me give you just a few quick
9 facts. Seven towers, the seven towers on
10 the perimeter that we didn't want to see
11 blocking the sun, well, they're there and
12 they will be completed soon. Together with
13 The Courts, a redevelopment project at --
14 lower down, contain and will eventually
15 contain 2,707 condominium units
16 representing about \$1.35 billion in taxable
17 valuation.

18 That brings in 35 million in county
19 and city tax revenues, about \$15 million to
20 the City of Miami Beach each year. People
21 paying an average of \$13,000 per year --
22 I just have a quick paragraph.

23 MAYOR DERMER: Sure, go ahead.

24 MR. DEL VECCHIO: In real estate --
25 in real estate taxes alone are spenders,

1 and they do not require costly city
2 services. Good planning to support this.
3 There is absolutely no economic reason for
4 the nightlife industry to fight
5 residential. They are fighting what is a
6 solution to their problem. The new
7 restaurant -- the new residents frequent
8 the restaurants and businesses, they
9 contribute to the community in many ways,
10 all they are asking is that South Pointe
11 remain residential and that they can get a
12 night's sleep.

13 Outdoor entertainment is
14 incompatible with the residential
15 neighborhood of the area. Clubs in the
16 area should open and operate indoors and
17 we will all prosper. Thank you.

18 MAYOR DERMER: Thank you, sir.

19 COMMISSIONER BOWER: May I ask,
20 Frank, that the new thing that came up with
21 that Jorge Gomez about the hotels issue,
22 the new --

23 MR. DEL VECCHIO: The hotel --

24 COMMISSIONER BOWER: The new
25 language that you (Inaudible.)

1 MR. DEL VECCHIO: Yeah, big --
2 big -- big hotels in the old -- the old
3 ordinance, the current ordinance, and this
4 provision, we think, should not change,
5 permitted a big hotel of 250 more rooms on
6 the ocean to have an indoor nightclub, and
7 that's what the planning board approved,
8 they approved an ordinance to keep out new
9 entertainment outdoors in the commercial
10 zones, but they retained that.

11 What Mr. Bercow presented really
12 before the gavel was -- just about when
13 it was going to ring down on the last April
14 30th meeting was to reduce it so that
15 smaller hotels of 100 rooms could have
16 nightclubs indoors, and that's a mistake.
17 We think -- we think you should delete it,
18 you should go back to the ordinance that
19 we discussed extensively before the
20 planning board.

21 MAYOR DERMER: Thank you, sir.

22 MR. DEL VECCHIO: Thank you.

23 MAYOR DERMER: I appreciate it. Let
24 us go now to Kent Harrison Robbins followed
25 by Ruth Remington. Welcome.

1 MR. ROBBINS: Good afternoon, Kent
2 Harrison Robbins. I represent 301 Ocean
3 Drive, a pedestrian family condominium on
4 the ocean where the men are strong and the
5 women are good looking, and I'm speaking,
6 perhaps, not just for that condominium
7 association but for the interests of
8 residents, and we all know that residents
9 are first in this town, and we have to
10 respect them, and this ordinance is
11 proposed by planning board and was approved
12 by the planning board 6-0.

13 It's an excellent ordinance and a
14 step to ensure compatibility between
15 residential use and nightclub and
16 entertainment use, and I think that it's
17 wonderful that we have a planning board
18 that who -- which is designated under the
19 Growth Management Act to review the law and
20 make determinations.

21 What concerns me about what's in
22 front of you today is that change that
23 occurred at the last minute at an
24 improperly noticed hearing where it was
25 slipped in that from -- instead of a

1 250-unit requirement in order to have a
2 nightclub, they reduced it to a 100-unit
3 hotel, expanding the potential of
4 nightclubs and entertainment along the --
5 in the hotel areas, the smaller hotel
6 areas, increasing the amount of nightclubs
7 an aggravating the very problem we're
8 trying to solve.

9 Now, it's almost as though there was
10 a poison pill put into there, but what was
11 the most irresponsible thing about it was
12 we have plans and -- we have procedures in
13 this town, and we have procedures under our
14 charter, under the Growth Management Act to
15 go to the planning board, and the planning
16 board said 250 units, and it was slipped in
17 by a lobbyist at the very last minute to
18 100 units. That's the only problem in this
19 ordinance.

20 Otherwise, he's great, and it's a
21 great step, and I want to tell you, this is
22 not going to impact lawful businesses in
23 place already. What this does is prevent
24 additional aggravation and additional
25 businesses that would adversely affect the

1 community -- the residential community.

2 There's no way that it can legally
3 take away rights that are already there,
4 but what it can do is prevent further noise
5 problems. That's all this is about.

6 I strongly urge you to pass the ordinance
7 that was approved by the planning board
8 without the amendment that was placed in by
9 Mr. Bercow and Mr. Milberg at the very last
10 minute.

11 MAYOR DERMER: Thank you for your
12 comments. Jorge, you wanted to make a
13 comment.

14 MR. GOMEZ: Yeah, I just want to
15 clarify one thing. It's -- it's not --
16 there's already a section of the code that
17 was passed in 1994, '95, that doesn't allow
18 dance halls and entertainment
19 establishments, the nightclubs, in the
20 South Pointe area. So we're talking about,
21 again, the exemption that the city
22 commission has created for restaurants with
23 entertainment.

24 So it could not be a stand-alone
25 nightclub that would be allowed in these

1 hotel. It would have to be a restaurant
2 with the entertainment component, which
3 means it has an occupancy load of 200 or
4 more.

5 MAYOR DERMER: Okay.

6 MR. GOMEZ: And it would require a
7 conditional use approval if the hotel had
8 (Inaudible.)

9 MAYOR DERMER: Question.

10 COMMISSIONER GROSS: Can you repeat
11 what you just said.

12 MR. GOMEZ: There's no more --
13 there's currently no more.

14 COMMISSIONER GROSS: No, nightclub
15 is not a permitted use in South Pointe, and
16 it hasn't been since 1994, standalone
17 nightclub not permitted, hasn't been for
18 ten, nine years.

19 MR. GOMEZ: Correct.

20 MR. ROBBINS: But what this does
21 is -- is -- and what this does clearly is
22 allow restaurants --

23 MR. GOMEZ: Restaurants (Inaudible.)

24 MR. ROBBINS: -- to have
25 entertainment or dance halls, and after two

1 o'clock in the morning, we know what those
2 become, and those become functionally
3 nightclubs, and that's the loophole that
4 would have been open should this poison
5 pill proposed by Mr. Bercow be allowed in
6 this ordinance.

7 It was never discussed and never
8 considered by the planning board, and you
9 should not consider it here.

10 MAYOR DERMER: I thank you for your
11 comments. Do you have a question,
12 Commissioner Smith?

13 COMMISSIONER SMITH: Yeah, Kent, let
14 me ask you a question. Come back, if you
15 could. Do you have any objections to a
16 restaurant operating in hotels with 100
17 units or more?

18 MR. ROBBINS: I don't think that's
19 an issue, the hotel. What happens, though,
20 you open the door up to the entertainment
21 part of it.

22 COMMISSIONER SMITH: Just on the
23 issue with the restaurant, do you have any
24 problem with the restaurant?

25 MR. ROBBINS: No, in fact, I think

1 it's fabulous what's been going on in South
2 Pointe. I think restaurants like Nemo's
3 have been an example of what should happen
4 in South Beach and throughout Miami Beach.
5 I'd welcome it in North Beach and Middle
6 Beach to have such a high quality
7 restaurants.

8 What we're concerned about is the
9 opening up the door through this side --
10 through the side door of (Inaudible.)

11 COMMISSIONER SMITH: How do you --
12 how do you close that loophole? How do you
13 allow a restaurant without turning into a
14 nightclub at two o'clock in the morning?
15 Can that be done?

16 MR. ROBBINS: Well, what you can do,
17 is you're going to have to modify some --
18 some definitions, because right now what
19 you're allowing, a neighborhood impact
20 establishment means an alcohol beverage
21 establishment or restaurant which is also
22 operating as an entertainment establishment
23 or dance hall.

24 So what you would have to do, then,
25 is then make a specific specification, and

1 I don't know if you can do that without
2 changing the other part the ordinance.

3 MAYOR DERMER: Let's hold that issue
4 until after we have the public hearing.

5 MR. ROBBINS: Well, let me answer
6 this here.

7 MAYOR DERMER: Very briefly, because
8 I want to get through this hearing tonight.

9 MR. ROBBINS: Okay. What you can do
10 is possibly, and I think Jorge is going to
11 have to and Gary is -- Mr. Held is going to
12 have to help us with this, is you may be
13 able to craft certain language in there
14 that prohibits any type of dance or
15 entertainment establishment within those
16 restaurants, but right now the language
17 does not permit that, but we can -- we can
18 do that, and maybe it can be done at this
19 hearing or maybe we'll just have to bring
20 this back by a separate ordinance.

21 MAYOR DERMER: Just -- just think
22 about it, and as we go through the whole
23 process, see if you can come up with
24 language that would allow a restaurant
25 without allowing a nightclub after two

1 o'clock.

2 MR. ROBBINS: That's correct.

3 COMMISSIONER BOWER: But if we don't
4 get it today, can that go as an
5 amendment --

6 MAYOR DERMER: Sure, let's just read
7 it.

8 COMMISSIONER BOWER: -- and then go
9 through the right channel of going that
10 specific issue, to the planning board and
11 through --

12 MR. ROBBINS: You're right Matti.
13 You're right, Matti.

14 COMMISSIONER BOWER: You know,
15 it shouldn't be done like that here,
16 it should be done the right way, the way
17 that this was done and let the boards, you
18 know, come up with language.

19 MAYOR DERMER: Well, at the time
20 that we have discussion at the end, this
21 can be amendment -- amended, or if there's
22 a portion of it you don't want for further
23 review, you can do that.

24 Yes, sir.

25 MR. GOMEZ: Yes, and I know you want

1 to get the public testimony gone.

2 MAYOR DERMER: Yeah.

3 MR. GOMEZ: There is another
4 ordinance that the planning board is
5 working on. They decided to hold off on
6 until June, and they want some further
7 studies done, but in that particular
8 ordinance, although it was not going to
9 include hotels, restaurants that were in
10 hotels but rather standalone restaurants
11 that became nightclubs after a certain
12 hour, if they were in residential
13 districts, which the R-PS4 is one or within
14 close proximity within a residential
15 district, they would then have to abide by
16 all the regulations of a nightclub.

17 In the case of a district where
18 nightclubs are already not allowed, then
19 the restaurant would have to close at 2
20 a.m. That was a very contentious ordinance
21 that the planning board held some
22 discussion already on, and but they put
23 that off until their June meeting.

24 MAYOR DERMER: Thank you, sir.

25 VICE MAYOR GARCIA: Mr. Mayor.

1 MAYOR DERMER: Yes, commissioner.

2 VICE MAYOR GARCIA: In view this is
3 going to be a workshop with the hotels,
4 wouldn't this be prudent to bring that as
5 an issue to our workshop?

6 MR. GOMEZ: That's exact -- I mean,
7 that was one of the things that I was going
8 to do, to take the opportunity, the
9 workshop that's going to be created
10 sometime in mid-June and talk about, beside
11 all these outdoor noise issues and all
12 that, I wanted to talk about that
13 ordinance. I thought that would be another
14 forum to discuss that ordinance and have
15 some further feedback.

16 VICE MAYOR GARCIA: Let me ask you,
17 you know, there seems to be a number of
18 ordinances coming out of the planning
19 board. I mean, how did they get to the
20 planning board, how did they get
21 presented -- excuse me, Mr. Gross -- is the
22 planning board a legislative body now or
23 are they making laws for all of us or do
24 we still run a commission up here?

25 MR. GOMEZ: First of all, the

1 planning board is an advisory body.

2 VICE MAYOR GARCIA: Okay.

3 MR. GOMEZ: And they have standing
4 to make recommendations for proposed
5 ordinances. This ordinance that you're
6 hearing today came out of the commission.
7 Obviously, all those type of ordinances
8 require the recommendation of the planning
9 board, but it originated here.

10 The ordinance about the restaurants
11 that operate as nightclubs after a certain
12 hour, that was held as a discussion item
13 with the planning board to deal with some
14 of the quality of life issues, and they
15 asked us to -- actually, it was a slightly
16 different ordinance which we were dealing
17 with which the planning board did not like,
18 and they came up with this alternative
19 ordinance. Again, it will be just a
20 recommendation that's brought to you.

21 VICE MAYOR GARCIA: My concern is a
22 lot of the -- a lot of legislation -- a lot
23 of legislation seems to be coming from the
24 planning board (Inaudible) through this
25 commission, and ultimately --

1 MR. GOMEZ: (Inaudible.)

2 VICE MAYOR GARCIA: Hear me out.
3 Ultimately, you know, and in the past,
4 we had given some of our land boards some
5 powers at the expense of commission
6 decisions, you know, and I think they're
7 coming back to bite us in the rear end.

8 COMMISSIONER GROSS: Well, let me
9 chime in on that, because we had a meeting,
10 a lot of these same people were here,
11 because I put it on the agenda in January,
12 which is now five months ago, and the whole
13 idea of prohibiting outdoor entertainment
14 in South Pointe came out of that two and a
15 half hour discussion, and we asked the
16 planning board to draft an ordinance to
17 implement what this commission all agreed
18 in a 7-0 vote that we wanted to do.

19 VICE MAYOR GARCIA: But that's --
20 I'm referring to the other -- to the other
21 ordinance that's going through the planning
22 board right now.

23 COMMISSIONER GROSS: Right, that -

24 VICE MAYOR GARCIA: I have no
25 problems with the way this ordinance was

1 referred, the other one is the one I'm
2 concerned.

3 COMMISSIONER GROSS: That one
4 actually was discussed at the land use
5 committee meeting, I believe, only in
6 relation to South Pointe. It did get
7 broadened by the planning board, but at the
8 land use committee meeting, I think you
9 chair it, we had a discussion -- or maybe
10 it was neighborhoods, I'm not sure which
11 one.

12 VICE MAYOR GARCIA: I don't remember
13 being on the land use, but I --

14 COMMISSIONER GROSS: Well, we had a
15 discussion --

16 VICE MAYOR GARCIA: I'm also there,
17 too, so --

18 COMMISSIONER GROSS: -- about the
19 fact that nightclubs are not permitted
20 under the zoning code right now in South
21 Pointe, and somehow nightclubs were ending
22 up operating after two o'clock in the
23 morning under the guise of restaurants, and
24 that -- that was discussed by the land use
25 committee, and that was referred also to

1 the planning board.

2 MR. GOMEZ: Let me -- yeah, let me
3 just go ahead and clarify that one point.
4 The ordinance, the format that we discussed
5 it had to do with a rational nexus between
6 the size of the hotel room and the allowed
7 accessory restaurant.

8 We were finding that, for example,
9 you could have an 8-unit hotel room with
10 150 seat restaurant. So that was sort of
11 the genesis, and I believe that was the
12 ordinance that we discussed at land use.

13 When we got to the planning board
14 with that proposed ordinance which was
15 referred to the commission by the planning
16 board, a lot of the restaurant industry
17 folks came out and -- and thought that that
18 was not the proper mechanism. The planning
19 board agreed with them, that they thought
20 that that was not how you had to control
21 the issue.

22 After further discussion, we came up
23 with the idea that it was those restaurants
24 that were exempt from the nightclub
25 regulations were perhaps something

1 we should focus, and it was drafted so
2 narrowly when we did discuss it at the
3 planning board, that of the 60 restaurants
4 that had -- that were operating past 2 a.m.
5 with the entertainment-like components,
6 only, I think, like 10 percent were going
7 to be affected if the ordinance had been in
8 place at the time that they were
9 (Inaudible.)

10 VICE MAYOR GARCIA: But how many of
11 the hotels came on board, because that --
12 that seems to be the big concern
13 (Inaudible)?

14 MR. GOMEZ: (Inaudible) ordinance?

15 VICE MAYOR GARCIA: No, no, on the
16 other ordinance, the ordinance with the --
17 that's going through the planning board
18 right now with the restaurants?

19 MR. GOMEZ: The hotels are not
20 involved.

21 MAYOR DERMER: Let us -- let us
22 continue with the public hearing
23 if we could. Let's focus on where we're
24 at. All right. Let us go.

25 Ms. Remmington, Ruth, welcome, and Ruth

1 will be followed by Enrique -- Enrique
2 Bargioni.

3 Go ahead, Ruth.

4 MS. REMMINGTON: Hi, I'm Ruth
5 Remmington. I live at 1000 South Pointe
6 Drive. Thanks for listening. Contrary to
7 the spin this ordinance is getting, it's
8 not about residents versus the nightclubs.

9 My husband and I both work in the
10 travel business, and we get how a tourist
11 destination survives. We would never
12 support an ordinance that tried to
13 eliminate nightlife or make clubs close at
14 2 a.m., or other falsehoods that are being
15 promoted to distract us from the issues at
16 hand.

17 This or answer is about giving
18 residents the ability to live in our homes
19 in a really specific area of South Beach.
20 It's about allowing residential
21 neighborhoods to evolve and improve rather
22 than decline and deteriorate.

23 The South Pointe Redevelopment Plan
24 seems to be a big success, and you guys
25 should feel really good about that, but you

1 have to pony up and govern based on the
2 fact that South Pointe was planned as a
3 residential neighborhood. I think you
4 should think of this ordinance as catch-up
5 urban planning. I think that's the way
6 that the planning board probably saw it,
7 and I'm also sort of surprised that the
8 nightlife industry would put itself -- pit
9 itself against an ordinance that's really
10 only asking for future clubs to have a roof
11 and only if they decide to open up in South
12 Pointe, and it seems kind of like a weird
13 fight to take on.

14 There's nothing hypocritical about
15 wanting to sleep at night in an apartment
16 that you bought that wasn't near outdoor
17 clubs when you bought it. The ordinance
18 still allows new clubs to open up in South
19 Pointe, they just need to have a roof.

20 If the nightclub guys feel my
21 hankering for a roof is a special interest,
22 they should wake up and smell the coffee,
23 because South Pointe is not the wild west
24 anymore. It's filling up with people who
25 work, people who vote, and people whose

1 kids go to schools in the neighborhood.

2 I think if you enact this ordinance,
3 you create a win-win. You get to keep the
4 revenues from the businesses that are
5 already here, you get the political and the
6 financial support of a huge wave of new
7 residents, you -- because of that new wave
8 of new residents, other businesses survive
9 besides nightclubs, restaurants, retail,
10 commercial, and that ensures that
11 residential and the business tax base grows
12 and continues to grow.

13 For the record, I'm not retired.
14 This is not about a bunch of the retirees
15 fighting nightlife. Every time I show up
16 at one of these meetings, I have to take
17 time off of work. Most of my neighbors
18 couldn't be here because they couldn't take
19 time off in the middle of the workday,
20 although they'll probably be here now, and
21 I just want you to do your job so we can
22 all go back to doing ours and paying our
23 mortgages. Please do the right thing.
24 Please enact this ordinance.

25 **MAYOR DERMER:** Thank you, Ruth.

1 Enrique Bargioni followed by --
2 it says here Deborah Reece, a letter to be
3 read by Marianne Del Vecchio, and you've
4 got two letters, Marianne, right?

5 MS. DEL VECCHIO: Yeah.

6 MAYOR DERMER: Okay. Well, as soon
7 as we finish with Enrique, then we'll call
8 them.

9 MS. DEL VECCHIO: Okay.

10 MAYOR DERMER: Go ahead, welcome,
11 sir.

12 MR. BARGIONI: Good afternoon.
13 Thank you for the opportunity, Mr. Mayor.
14 I'm Enrique Bargioni. I live on 1000
15 Venetian Way, and I'm here representing the
16 Venetian Causeway Neighborhood Association,
17 which as you know part of it belongs to the
18 City of Miami and part of it is the islands
19 which belong to the City of Miami Beach.

20 I'm -- I'm not a lawyer, and
21 therefore, the only thing I want to present
22 very quickly is real life examples of what
23 can happen when noise is out of control,
24 and the example that I have happened on
25 April 19th as a result of the opening of

1 Parrot Jungle, which as you know is across
2 from where we live.

3 There was an outdoor event which
4 started roughly around 9 p.m., it went on
5 until 5 a.m. Okay? And let me delineate
6 the human impact, the valuation impact, and
7 the impact on the resources of this city as
8 well.

9 Number one, there were senior
10 citizens and very good voters who did not
11 sleep that night and did not go to church
12 as a -- in the following morning as a
13 result of being exhausted can from lack of
14 sleep. There were also convalescent people
15 who were unable to sleep.

16 Number two, the following morning,
17 Sunday morning, there was a prospective
18 buyer for one of the units. As part of his
19 due diligence, he normally asked the
20 residents, you know, what are the problems
21 that you see down the road. The residents
22 said, look, be careful, because we have
23 noise around there. What did the
24 perspective buyer did? He said let me see
25 what happens.

1 Finally, there were no less than 40
2 calls to the City of Miami and, I believe,
3 to the City of Miami Beach police in order
4 for them to attend to this matter, and I do
5 not think that in this time of stretched
6 resources, that is the best way for the
7 police to spend their time. Thank you very
8 much.

9 MAYOR DERMER: Thank you, sir.
10 Okay. Marianne, you're going to read us a
11 letter, a couple of letters. They're brief
12 letters, I take it?

13 MS. DEL VECCHIO: Very brief.

14 MAYOR DERMER: Okay. From Deborah
15 Reece and Jean Mochridge, welcome.

16 MS. DEL VECCHIO: You know, these are
17 two women who couldn't be here because they
18 couldn't get away from work, and Deborah
19 Reese is the senior vice president and
20 general counsel of the restaurant services
21 to -- I won't give the address. Okay. She
22 is a resident. I'm cutting it down a bit.

23 She's a resident at Murano at
24 Portofino at 1000 South Pointe. She's in
25 favor of this ordinance, the proposed

1 ordinance. She writes:

2 "Prior to taking occupancy of my
3 unit at 1000 South Pointe Drive, I lived at
4 South Pointe Towers at 400 South Pointe
5 Drive. I felt I had no alternative but to
6 move due to the noise and disruption caused
7 by the Nikki Beach club.

8 I would be tremendously disappointed
9 should you fail to read the ordinance
10 referred to above at Wednesday's meeting
11 and should you fail to fully support
12 it going forward. My work at restaurant
13 service prevents me from attending the 2:30
14 meeting. I sincerely hope that you will
15 represent my interests and the interests of
16 the other residents in the neighborhood
17 since I cannot be there."

18 And this letter is from Jeanie
19 Mochridge is who is a realtor at Majestic
20 Properties:

21 "I'm a resident living at 1000 South
22 Pointe Drive, Murano. I'm in full support
23 of the ordinance." Cutting down here.

24 "Please respect my right to have piece and
25 quiet in my neighborhood and pass this

1 ordinance. As a side note, many of my
2 clients are selling their properties at
3 Murano and Portofino because of the noise
4 factor and urban weekends and lack of the
5 police patrols in the South Pointe area.
6 Three of my clients have recently been
7 mugged. My work prevents me from attending
8 the 2:30 meeting on Wednesday. I hope you
9 will represent my interests as well as my
10 clients who have bought property in the
11 area."

12 MAYOR DERMER: Thank you, Marianne.
13 All right. I've got Joe Del Vecchio who
14 wants to read another letter. Now, we're
15 not going to do this anymore. Okay?
16 This -- Joe, you're the last one with the
17 letter reading. If you want to send this
18 letter, send it, because we'll make it part
19 of the record, but in the interest of time,
20 this will be our last letter.

21 MR. DEL VECCHIO: Thank you.

22 MAYOR DERMER: Go ahead.

23 MR. DEL VECCHIO: I'm reading a
24 letter from Josh White:

25 "Dear Mayor Dermer and

1 commissioners, I live at 1000 South Pointe
2 Drive, and I'm writing in support of the
3 ordinance on outdoor entertainment in
4 commercial zones in South Pointe and
5 nightclubs in residential zones.

6 My wife and I moved to South Beach
7 wanting a diverse, lively, and interesting
8 city to live in. While we could have moved
9 almost anywhere, the attractions of Miami
10 Beach, including its nightlife, were a big
11 factor. My support of this ordinance is
12 not anti-nightclub, I simply want to be
13 able to enjoy the inside of my apartment as
14 I wish without being blasted by noise.

15 This seems like a simple request,
16 and laws to support this are the least
17 I expect from my legislators, relying on
18 the very difficult to enforce county noise
19 ordinance is not practical and simply drags
20 on while the noise violations continue.

21 In addition, I would like the
22 sections of South Pointe to retain their
23 residential character by zoning them to be
24 residential. This ordinance is the
25 embodiment of the major selling point for

1 the very expensive housing in South Pointe
2 and one that we thought we bought.

3 We could live close to entertainment
4 districts but could live in a residential
5 district. I wish I could be there to
6 testify, because I feel very strongly about
7 this, but I'm writing from Barcelona where
8 I'm working for two weeks.

9 I find the nightclubs' resistance to
10 this ordinance most unfortunate. They have
11 mischaracterized your potential support of
12 this ordinance as being anti-nightclub.
13 I have spoken to several of you personally,
14 have testified on this issue before, and
15 I am confident that the logic of this
16 measure is apparent to all of you.

17 I hope that you can stand up to a
18 rational protest and support this measure.
19 Thank you, Josh Fisher, 1000 South Pointe
20 Drive."

21 MAYOR DERMER: Thank you, sir. Let
22 us get to Michael Critser, or Critzer,
23 Michael, and we'll follow that with
24 Christina Labusetta. Welcome.

25 MR. CRITSER: Hi, Mike Critser, I'll

1 be really brief. One point I want to get
2 across is we already have enough noise
3 problems in the south of 5th Avenue between
4 Opium and Nikki Beach, which are both
5 outdoor entertainment establishments. Now
6 we have Taverna Opa which has an open
7 air -- open air part of their
8 establishment, a back patio, and I hear
9 noise from Opium, Taverna Opa, and Nikki
10 Beach. I've got enough noise to deal with.
11 I can't sleep on certain nights of the
12 weekend, what's today -- or during the week
13 when someone's yelling happy birthday or
14 screaming Opa from Taverna Opa. That's a
15 small area.

16 You know, I don't think any of us
17 down in South Pointe want anymore outdoor
18 establishments. We have enough already,
19 we can't even deal with what we have. How
20 are you going to let anymore go in down
21 there. I mean, you can't even control
22 what's going on right now.

23 MAYOR DERMER: Thank you for --
24 thank you for your comments, sir. Let's
25 get to Christina Labusetta, and that will

1 be followed by Claire McCord. Okay.

2 MS. LABUSETTA: Hi, my name is
3 Christina Labusetta, 465 Ocean Drive
4 president of the Ocean Drive Preservation
5 Association. I want to say that I'm fully
6 behind the proposed ordinance. It does
7 protect us from new outdoor entertainment
8 establishments, but what I don't approve of
9 is the amendment to the ordinance which
10 would allow hotels with 100 plus rooms to
11 have -- to essentially have nightclubs,
12 accessory -- accessory -- well, I forgot
13 what I called. Anyway, it would allow them
14 to have restaurants which would be thinly
15 veiled as nightclubs.

16 What this would end up creating is
17 one long nightclub row from 15th Street to
18 South Pointe. The Savoy Hotel is the first
19 one. They're the ones that added -- wanted
20 the amendment added, and that would -- that
21 would begin at the 400 block, it would be a
22 nightclub there.

23 Going down a little further, there's
24 two -- there's two properties that are
25 going to be developed into a hotel. They

1 would have 100 plus rooms. That would be
2 potentially another nightclub. You go down
3 further, you have the Marriott which has
4 over 100 rooms but not enough for the 200.
5 They would also potentially have a
6 nightclub. Further down you have -- you
7 already have Penrod's, Nikki Beach Club,
8 Pearl, whatever you want to call the whole
9 establishment.

10 That would create a whole gridlock,
11 noise, drunk and disorderly all the way
12 from 15th Street to South Pointe. It's
13 something that people can't live with.
14 It also makes the hotels that do not have
15 entertainment economically unviable, they
16 can't rent those rooms.

17 And in conclusion, I would hope that
18 you pass the ordinance, remove the
19 amendment, and send it back to the planning
20 board for further discussion.

21 MAYOR DERMER: Thank you very much.

22 MS. LABUSETTA: Thank you.

23 MAYOR DERMER: Claire McCord

24 followed by Morris Sunshine. Welcome.

25 MS. MCCORD: Good afternoon. I'm

1 not going to read a letter, but I hope it's
2 okay if I read something from someone who
3 is now deceased.

4 MAYOR DERMER: Why not?

5 MS. MCCORD: First of all, I'm
6 Claire McCord. I live at 345 --

7 MAYOR DERMER: Was it profound?

8 MS. MCCORD: I think it is.

9 UNIDENTIFIED SPEAKER: The question
10 is whether he can vote.

11 MS. MCCORD: What's that?

12 UNIDENTIFIED SPEAKER: Can he vote.

13 MS. MCCORD: You know, I have to
14 tell you, I come from Chicago, I think they
15 vote no matter what. We say, vote early
16 and often.

17 MAYOR DERMER: Yes, okay.

18 MS. MCCORD: First of all, I'd like
19 to say I live at 345 Ocean in the South
20 Beach -- in the South Pointe area in the
21 Ocean Beach Historic District. I moved
22 there because the district was low scale,
23 the quality of life was quiet, and it was
24 just a great residential neighborhood.

25 The piece I want to read just

1 briefly is from a guy named Bart Giamatti.
2 Bart was president of Yale University, a
3 Renaissance scholar, and commissioner of
4 baseball. He was a Renaissance guy.

5 Here's what he said:

6 Human beings made and make cities,
7 and only human beings kill cities or let
8 them die, and human beings do both, make
9 cities and unmake them by the same means,
10 by acts of choice. We enjoy diluting
11 ourselves in this as in other things. We
12 enjoy believing that there are forces out
13 there completely determining our fate,
14 natural forces or forces so strong that
15 would send cities through organic or
16 biological faces of birth, growth, and
17 decay.

18 We avoid the knowledge that cities
19 are at best works of art and at worst
20 ungainly artifacts, and that we, not some
21 mysterious force or cosmic biological
22 system, control the creation and the life
23 of a city."

24 We do. You do, and we ask you to do
25 that here today by acts of choice, namely

1 by the respect for the character of an area
2 and the passing of that ordinance with the
3 changes of -- with the sending it back to
4 the planning board because of those changes
5 that slipped through. I would support what
6 Kent says, what Christina says, and what
7 Bart Giamatti says.

8 Just thinking about baseball for a
9 second makes me think of Field of Dreams,
10 "If you build it, they will come." Well,
11 we built it, we built the South Pointe area
12 as a residential area, and they came.
13 I came, and all we ask now is that we do
14 that catch-up urban planning and protect
15 the value and the life of our area.

16 It doesn't mean we don't have
17 nightclubs, it doesn't mean we don't have
18 energy, it means we have the correct and
19 appropriate character for the area that
20 we built. I ask you to make that choice.
21 Thank you.

22 MAYOR DERMER: Okay. Morris
23 Sunshine, Dr. Sunshine, and then we'll
24 follow that by Erica Brigham. Welcome.

25 MR. SUNSHINE: Members of the board,

1 for the record, my name is Morris Sunshine.
2 I live at 456 Ocean Drive. I live on the
3 north side of the Savoy property, and
4 therefore, I have a major interest in what
5 I think is an addendum to a law which
6 I think everybody approves of, which was
7 entered into the record in a moment of
8 parliamentary disorder.

9 At the last minute at your last
10 meeting, Mr. Bercow approached the podium
11 and suggested that you tamper with the
12 neighborhood impact establishment ordinance
13 which currently does not permit internal
14 nightclubs for hotels unless there's 250
15 rooms.

16 You've got the staff report.
17 It shows you that the staff moves for 100
18 rooms. I talked with Mr. Bercow before
19 this meeting started, and I think when
20 he approaches this podium, he will tell you
21 that's not good enough, he would like you
22 to reduce that standard to 50.

23 Since I live next door to the Savoy
24 and have lived there since 1991, I can tell
25 you, and I think some of you know, and you

1 in particular, Mr. Mayor, know, because you
2 were once the attorney for my condo
3 building.

4 MAYOR DERMER: Uh-huh.

5 MR. SUNSHINE: -- know that this
6 particular property has always been a
7 problem property, and I assure you that
8 if you tamper with the neighborhood impact
9 establishment standard as it exists now,
10 the 250 standard, what will happen is that
11 we will get a nightclub immediately
12 adjacent to us.

13 On both sides of the Savoy are large
14 apartment buildings with 238 apartments in
15 each building, so it's a very serious issue
16 for us, and I hope that you recognize when
17 people stand up and say they approve of the
18 ordinance, I'm talking residents, they mean
19 the ordinance which would forbid outdoor
20 and open air entertainment. They do not
21 approve of the proposition to tamper with
22 the neighborhood impact establishment
23 clause.

24 I will say only one more thing and
25 then I'll let you go. My friends --

1 MAYOR DERMER: Thank you for your
2 courtesy. I appreciate it.

3 MR. SUNSHINE: Thank you.

4 MAYOR DERMER: Let us know when
5 we can be excused.

6 MR. SUNSHINE: People have
7 overestimated my intellectual power simply
8 by a half inch of paper explaining all this
9 in legal terms, but let me explain it to
10 you in vernacular terms. I asked the
11 attorney for Bercow & Radell who represents
12 Arden Group which owns the Savoy.

13 If Mr. Craig Spencer would send me a
14 letter explaining his intentions for the
15 use of the Savoy, if he did in fact receive
16 a neighborhood impact establishment permit.
17 I told a member of that firm that of course
18 I was concerned about the possibility of a
19 restaurant turning into a nightclub, and
20 we have seen that, for example, empirically
21 Joya, where their initial proposal was a
22 lounge. Within two weeks of opening it had
23 a DJ, it had a dance floor, and it was a
24 full-blown nightclub as an accessory, of
25 course, to a hotel.

1 What response did I get back? I got
2 back a response to wit -- to wit that
3 Mr. Spencer does not wish to put anything
4 in writing. You may, therefore, conclude
5 Savoy NIE, neighborhood impact
6 establishment, equals Savoy nightclub.
7 Please don't do that. Thank you.

8 MAYOR DERMER: Thank you. Let me --
9 let me ask a question of planning, because
10 you jogged a memory of mine, because
11 I remember when I represented you, this
12 goes back ten years, at least ten years,
13 and Ted April, I think --

14 MR. SUNSHINE: Yes.

15 MAYOR DERMER: -- was the adjoining
16 condo president at that time, and the issue
17 we had was that property was going to be
18 turned into -- it was after Woody's, right?
19 It was going to have -- Charles Asnavor was
20 coming and was going to put piano bars out
21 there, and they were all upset about it.

22 We got a list of conditions on the
23 property -- associated with the license,
24 I believe if I recall.

25 MR. GOMEZ: It was (Inaudible) of

1 adjustment variance.

2 MAYOR DERMER: Right, and there was
3 a whole list of conditions that we threw in
4 there. Are those still in effect?

5 MR. GOMEZ: Those are still
6 applicable, yes. There's been a few
7 modifications throughout the year, and --

8 MAYOR DERMER: So they can't have
9 any outdoor noise, and they can't --

10 MR. GOMEZ: I think they restrict
11 the volume of the level outside, they
12 restrict the hours that -- yeah.

13 MAYOR DERMER: Because I remember --

14 MR. GOMEZ: That's all -- those are
15 all still in place.

16 MAYOR DERMER: Okay.

17 MR. GOMEZ: The establishment does
18 have a license for a 200-seat restaurant
19 with a 300 person occupancy, and that's a
20 valid license right now. I don't know
21 whether they -- they have entertainment
22 inside or not. I do know that they are
23 bound by those conditions that have been
24 listed in the board of adjustment file.

25 MAYOR DERMER: Oh, okay. I'd like

1 to see what those look like again if you
2 could, so if you could pull them up.

3 MR. GOMEZ: Like 27 of them,
4 I think.

5 MAYOR DERMER: Yeah, it was a long
6 time ago. All right. Thank you.

7 Yes, hello, Erica, how are you?

8 MS. BRIGHAM: Erica Brigham. I'm
9 one of those 301 Ocean Drive residents.
10 I was also a member of the South Pointe
11 Advisory Board for years until it was
12 disbanded a little while ago, and one of
13 the points that the South Pointe Advisory
14 Board always made was that this is a very
15 special residential district that's -- and
16 the zoning is completely separate from that
17 north -- on Ocean Drive north of 5th Street
18 and on Collins Avenue north of us.

19 The Marriott has 238 rooms and could
20 easily get to the 250 barrier. The Bentley
21 could combine with the lots below it and
22 could come up to the 250. I think that
23 this prescription against outdoor
24 entertainment establishments should be
25 completely removed.

1 If you don't pass the total
2 prescription against outdoor entertainment
3 and outdoor -- neighborhood impact
4 establishments, it would just open the door
5 to more litigation and animosity and
6 perpetuate the intensity of the
7 Amnesia/Opium syndrome which just pits
8 various factions of the city against each
9 other.

10 If an outdoor entertainment
11 establishment or a neighborhood impact
12 establishment becomes a draw in itself,
13 it's not just the noise, it's the traffic
14 jams, bad behavior, screaming, thumping
15 bass until 5 or 6 p.m., plus the litter
16 that hangs on around for days.

17 It can cost the city massive extras
18 in policing, code enforcement, street and
19 sidewalk cleaning, and trash removal and
20 spreads all of those forces thin,
21 particularly in this time of economic
22 downturn this could be very bad.

23 It will affect thousands of people
24 who have moved in here and the millions
25 that the city takes in. The people did not

1 move in here to be hermetically sealed
2 behind airport windows. We all want to be
3 free to open our windows, to use our
4 balconies, to smell and feel the salt air,
5 and hear the ocean. These provisions could
6 be devastating to the residents, and the
7 intent of the RDA in a high-end residential
8 area along the perimeter of South Beach in
9 a neighborhood which is supposed to have
10 simply neighborhood businesses to serve the
11 residents, not to torture them.

12 And it could also be very
13 devastating for the established businesses,
14 the outdoor clubs that exist and the
15 entertainment areas north of 5th Street on
16 Ocean Drive and such successful
17 contributing enclosed clubs such as Crobar
18 and Level, and it could all -- it could
19 hurt the very people who are probably going
20 to be in opposition to this, because South
21 Pointe is thought of as a very trendy area
22 at the moment.

23 MAYOR DERMER: Ms. Brigham, I'm
24 going to have to ask you to finish up.

25 MS. BRIGHAM: (Inaudible) the clubs

1 that are there are enough.

2 MAYOR DERMER: Thank you very much,
3 Erica. Call upon Gary May followed by
4 Clotile Luz.

5 COMMISSIONER GROSS: Mr. Mayor.

6 MAYOR DERMER: Yes.

7 COMMISSIONER GROSS: Can we -- point
8 of order. The position, I think, of the
9 advocates of the ordinance is very
10 well-known. We can go on for hours,
11 I think.

12 MAYOR DERMER: I agree with you.
13 (Inaudible.)

14 COMMISSIONER GROSS: I was wondering
15 is there a way -- if people have a
16 different slant on it, you know, agree, or
17 maybe just ask all the people in support of
18 the ordinance to stand. At this point
19 we've gotten a pretty good flavor or for
20 the arguments.

21 MAYOR DERMER: Well, I know that,
22 but we got to do public hearing, and we're
23 almost there. We're almost -- you've just
24 got to be a little patient. People are
25 hoofing it over here, we have to let them

1 speak.

2 Okay. Go ahead.

3 MR. KNIGHT: Okay. I'm Gary Knight,
4 I reside at -- in 2401 Collins, otherwise
5 referred to as North South Pointe. I'm
6 here to speak on behalf of -- of this
7 ordinance. I want to point out that the
8 Collins Park Neighborhood Association did
9 pass a resolution three meetings ago
10 opposing any outdoor entertainment venues
11 adjacent to residential properties, and
12 we are in -- therefore, we are in support
13 of our neighbors in South Pointe
14 endeavoring to accomplish this today, and
15 I encourage you to do that without the --
16 the change in that amendment.

17 I think that there's one thing that
18 we need to talk about here that hasn't been
19 raised yet, to address Commissioner Gross's
20 point, and that is that I think the city
21 reached a high point during the meetings of
22 the Blue Ribbon Task Force when the
23 citizens and the residents and the business
24 people and the club owners and the
25 restaurant owners and the hotel operators

1 and managers all met together to work on
2 common solutions for common problems, and
3 how we could have come from the period
4 after September 11th to be in a period
5 where we are -- where everyone seems to be
6 at everyone's throats and saying very
7 negative things about each other is to my
8 way of thinking a tragedy for a civilized
9 community like -- like Miami Beach.

10 So I want to suggest some principles
11 by which -- that we need to consider as you
12 consider this -- this particular -- these
13 issues that are going to be coming forward,
14 and this is just one of, I think, the first
15 of several that are going to be coming --
16 coming forward.

17 First, I think the commission, the
18 hotel operators, the club owners, and --
19 and the business operators in Miami Beach
20 need to recognize that the residents do
21 have a right to the quiet enjoyment of
22 their property, and that is, I think, an
23 ineluctable principle which is at the basis
24 of any civil society that we hope to create
25 here.

1 Second, I think we need to also
2 recognize that we have -- we are in an
3 economic condition which is tough, and that
4 the businesses, the hotels, the clubs, and
5 so on are in tough economic times, and
6 I think as a resident, I'm -- I'm --
7 I regret it, and I hope that they do as
8 well as possible; however, we need to have
9 a certain amount of respect for each other.

10 So I would like to see successful
11 clubs, and I think the proceeding person,
12 Erica Brigham made a very good point, let
13 the nightlife industry exist in enclosed
14 clubs. Let it be as -- as -- as vibrant as
15 possible, but let not the nightlife
16 industry violate the residents' right to a
17 quiet enjoyment of their property.

18 Additionally, I think it's extremely
19 important, if we're going to continue to
20 have a civil society here, that the hotels
21 in particular to which nightlife efforts
22 are migrating, that they not object to the
23 county noise ordinance, or to do so is to
24 tear at the basic fabric of the respect
25 that people previously enjoyed in this

1 community.

2 It's very, very important that
3 we solve these problems in a -- in a
4 respectful manner, but if we start to lack
5 respect for each other and start making
6 claims that are not true, we are in a very
7 big problem here in Miami Beach. Thank
8 you.

9 MAYOR DERMER: Thank you for your
10 comments. I'd like to get to Clotile Luz
11 followed by Frank Fiorentino.

12 Welcome, Clotile.

13 MS. LUZ: Good afternoon, everyone,
14 Clotile Luz. Yes, I am very concerned
15 about the amendment that's been tacked on
16 here, and I think -- and I do have,
17 I think, two points that maybe we haven't
18 brought up yet.

19 Let me just say as a preamble that
20 I think when so many of these projects went
21 up in South Pointe, something like 5,000
22 condo units, the developers said, you know,
23 pay \$1 million, your view of the ocean
24 includes spa, parking. It didn't say
25 it includes three neighborhood DJ's playing

1 or you could hear it. You know, no one
2 elects DJ's to send you music at a time
3 when you might want to read, nap, have a
4 conversation. I just I think it's unfair.

5 Now the points I would make that
6 have not come up yet, I think, are that
7 many -- probably the most successful
8 nightclubs of Miami Beach history have been
9 indoor clubs, Liquid and Salvation are no
10 longer around, but they mutated, Crobar,
11 Level today.

12 I went to a place called Mynt.
13 Those are indoor clubs, they are packed,
14 people are buying liquor, they're dancing,
15 they look trendy, they're all much younger
16 than I am, and they're working very well,
17 and I don't think anybody's trying to put
18 them out of business, honestly. The most
19 famous nightclub in history, Studio 54, was
20 an indoor club.

21 One other thing, I think it was kind
22 of unfair and undignified to claim that
23 Miami Beach owes its identity to the
24 nightlife. I think that's a disservice to
25 Barbara Captiman and people, some of whom

1 are on this commission, who worked very
2 hard in preservation.

3 I think that there are a thousand
4 resorts in the world that have nightclubs
5 and are beach -- are on the beach, and you
6 can go to Ibiza or Mykonos or something,
7 but Miami Beach is famous for Art Deco, and
8 I will make the point that if you go on
9 Goggle on the internet and you look up
10 Miami Beach Art Deco, you come up with in
11 one -- 15 seconds, 54,600 hits mentioning
12 Miami Beach and Art Deco.

13 If you go on Google and you look up
14 Miami Beach and nightclubs, you come up
15 with half that number. 54,600 press
16 mentions of this town and preservation.
17 Those are quality of life, people, that
18 made this town what it is.

19 I don't think the nightclub people
20 should be so delusional that they're the
21 only one's making the identity of this
22 town. Thank you.

23 MAYOR DERMER: Thank you. Let us go
24 to Frank Fiorentino followed by Gene
25 Woodard. Frank, are you present? Welcome.

1 Frank is not here. Gene, welcome.

2 MR. WOODARD: Frank had to leave.

3 MAYOR DERMER: Okay.

4 MR. WOODARD: Thank you, Mr. Mayor,
5 commissioners. My name is Eugene Woodard.
6 I'm here representing the North Ocean Drive
7 Area Residents' Association, and we support
8 the passage of the ordinance approved by
9 the planning board to restrict outdoor
10 entertainment in South Pointe on the
11 grounds that the residential community
12 needs greater protect now from the unwanted
13 noise than perhaps it ever has.

14 And so (Inaudible) I think I might
15 have a slightly different spin on some of
16 these comments that I'm going to make, so
17 hopefully it will enliven it a bit.

18 There are some in the audience who
19 will say we should have known better when
20 we made our choices to live in South Beach
21 with its high-intensity urban environment
22 and history of entertainment. I would
23 strongly argue that that point of view is
24 out of touch with the reality of change,
25 which has occurred in South Beach over the

1 last five years in terms of capital
2 investment and the resulting demographic
3 shift that followed.

4 And I have a few numbers that
5 I think might put this notion of change
6 into better perspective for all of us.
7 From a financial standpoint, in the last
8 five years, assessed property values in
9 Miami Beach increased by \$4 billion in the
10 last five years, from 6.5 billion to
11 10.6 billion. That's a 63 percent increase
12 in a five-year period, which is rather
13 phenomenal.

14 A sizable share of this \$4 billion
15 reflects the growth in the residential
16 community. In the current budget year,
17 property tax revenues in the general fund
18 totaled \$85 million. 73 percent of that
19 \$85 million comes from residential
20 properties in Miami Beach.

21 Now, just to give you a contrasting
22 number to think in terms of, the resort tax
23 in the current year generated revenues in
24 the general fund of \$16 million. That's
25 roughly 25 percent of the residential ad

1 valorem tax contribution.

2 Demographics, approximately 6,000
3 new residential units will have been
4 created in Miami Beach from 1997 through
5 2004, approximately 85 percent of which are
6 here in South Beach. The individuals and
7 families moving into these new units are
8 not simply moving down from north and
9 Mid-Beach but rather are coming from New
10 York, Boston, San Francisco, and other
11 major world urban locations which adds
12 considerably to the diversity mix here in
13 South Beach.

14 The inhabitants are largely young
15 professionals who are not only bringing
16 dollars to local businesses, including
17 entertainment, but are also giving their
18 time to government affairs and serving as
19 volunteers on various local boards.

20 Our decision to move here was
21 rational and it had the following two
22 expectations. One, the city administration
23 wished to encourage the development of
24 high-end condominium projects on South
25 Beach as a stabilizing influence to its

1 evolution and as a means of strengthening
2 the economic base for the future.

3 Two, many of us who purchased prior
4 to the start of construction did so on the
5 basis of promised capital improvements
6 throughout South Beach.

7 MAYOR DERMER: Eugene, I have to ask
8 you to finish up.

9 UNIDENTIFIED SPEAKER: Yeah, let me
10 just -- if I can just make one more final
11 thought, I'd appreciate it. Implicit in
12 our decision-making process, therefore, was
13 the presumption that our rights under
14 existing laws would be protected, and
15 I want to emphasize that point.

16 We did not investigate here on the
17 expectation that new laws granting new
18 protections would be needed, but only that
19 existing laws would be enforced. Mr. Mayor
20 and fellow commissioners, as political
21 leaders, we believe that you not only have
22 a moral duty to protect the rights of all
23 of those who make substantial capital
24 investments in this promised new South
25 Beach, but as elected officials, you have

1 an obligation to protect our interests by
2 supporting enforcement of existing laws
3 which were designed to protect us and our
4 rights against those who would otherwise
5 have you champion their personal interests
6 above the city's. Thank you.

7 MAYOR DERMER: Thank you, sir. All
8 right. I have mal -- Mallory Kauderer.
9 Mallory? Not present.

10 Beatrice, Beatrice Crites,
11 I believe. No? Okay. Followed by Frank
12 Dosa.

13 MS. CRITES: Hello.

14 MAYOR DERMER: Welcome.

15 MS. CRITES: My name is Beatrice
16 Crites, and I live at the Portofino Towers.
17 Okay. First, I want to make clear I'm not
18 here against any legislation or create
19 controversy. Okay? There's a number of
20 people that live in the same building
21 I live, and they feel the same way I feel,
22 and that is that we don't hear any noise.
23 Okay?

24 I feel sorry that some people around
25 the South Pointe area feel affected, and

1 it's -- it's creating a lot of controversy
2 and problems. However, I just want to
3 mention to you that Portofino Towers has no
4 windows, only sliding glass doors, and
5 those windows are very special adaptive
6 against noise or hurricanes or anything,
7 sand or anything, so I don't understand
8 what they're doing.

9 You know, people that live there
10 don't hear any noise. Okay? But they're
11 being affected -- they're being affected by
12 the fact that their parking lots are
13 getting crowded by people going to the
14 clubs at night, because there's a number of
15 people that live in Portofino that invite
16 their friends, and they park over there, so
17 it's creating a problem, a parking problem.

18 And I personally call a friend of
19 mine today that lives there, and I told him
20 what was going on that they were trying to
21 put down Opium Garden because of the noise,
22 and he said I don't have a problem about
23 the noise, my problem is that they're
24 turning this place into Hialeah and our
25 parking is getting crowded, and he lives in

1 38 -- he lives on the 38th Floor.

2 MAYOR DERMER: Okay. Well,
3 I appreciate your comments.

4 MS. CRITES: So I'm here to ask
5 people to get their thoughts together and
6 to come to a conclusion, and not -- I'm
7 here to support the nightlife.

8 MAYOR DERMER: Thank you very much.

9 UNIDENTIFIED SPEAKER: What was that
10 reference to Hialeah?

11 MS. CRITES: He said -- he said the
12 crowds are turning into like -- like
13 if it was Hialeah. He never said anything
14 about --

15 COMMISSIONER BOWER: But what does
16 it -- what does Hialeah have to do with the
17 crowd? What kind of crowd is it that
18 Hialeah has, do you know?

19 MS. CRITES: I don't know. He said
20 that, and I said what are you talking
21 about.

22 COMMISSIONER BOWER: I -- I -- yeah.

23 MAYOR DERMER: Okay. Let's stay --
24 let's stay on Miami Beach.

25 COMMISSIONER BOWER: He's from

1 Hialeah.

2 MS. CRITES: Yeah.

3 MAYOR DERMER: Let's -- listen, it's
4 wonderful having you, and we appreciate
5 your comments.

6 MS. CRITES: Yeah, and (Inaudible.)

7 MAYOR DERMER: But we're going to
8 keep focusing on this ordinance and moving
9 forward.

10 MS. CRITES: Yes.

11 MAYOR DERMER: All right. Frank
12 Dosa. Frank, welcome, and we'll follow him
13 with Steve Polisar.

14 MR. DOSA: So Frank Dosa. I living
15 in 93 (Inaudible) Avenue. So I came here
16 because I moved here two years ago from
17 Paris, because I really like South Beach,
18 and what I like here first is the Art Deco
19 architecture and second the nightlife, and
20 I'm not affiliated to any club, I just go
21 as a regular customer, and the nightclub --
22 the outside nightclub, outdoors nightclub
23 are beautiful, like Nikki Beach, like Opium
24 Garden, there is a lot of activity, there's
25 a lot of energy, and they are beautiful.

1 So I don't think that the resident
2 in South Pointe -- I mean, I understand
3 that you -- I understand that they want
4 less noise, but at the same time you come
5 in a place where there is nightclub and you
6 have to expect some noise. If you don't
7 want to expect some noise, you do -- when
8 I chose to moved here, I could have lived
9 in Aventura or in Coral Gables or in Key
10 Biscayne or some place like this, so.

11 UNIDENTIFIED SPEAKER: Hialeah.

12 MR. DOSA: Hialeah, exactly.

13 MAYOR DERMER: You know, we're going
14 to -- listen, listen, we're going to be in
15 Dade politics in the newspapers, so let's
16 just focusing --

17 MR. DOSA: So I think that we --

18 MAYOR DERMER: (Inaudible.)

19 MR. DOSA: -- we should (Inaudible.)

20 MAYOR DERMER: And we don't need any
21 comments from Raul Martinez talking about
22 Miami Beach, let's just -- let's just cut
23 it off here. Go ahead.

24 MR. DOSA: So I choose to move here
25 because I like the Art Deco architecture

1 and I like the nightclub, and I think that
2 if you choose to move in South Beach,
3 if you choose to live here, you should
4 respect both. The Art Deco architecture,
5 and I don't think the high-rise condominium
6 respect the Art Deco architecture, and
7 if you choose to move here, you have to
8 deal also with the nightclub, and this is
9 the life. If you don't like the nightclub,
10 if you don't like the Art Deco
11 architecture, you move somewhere else.

12 MAYOR DERMER: Well, I thank you,
13 sir, for your comments. Let us have -- let
14 us have Mr. Polisar followed by -- now, why
15 were the people in North Beach clapping.
16 They're here on the guard gate issue.

17 UNIDENTIFIED SPEAKER: Right.

18 MAYOR DERMER: Right. Okay. You
19 can discuss that when we get to your issue.
20 Okay, let's go Steve Polisar followed by
21 Cecilia Glasser.

22 MR. POLISAR: Ladies and gentlemen,
23 Steve Polisar, chairman of the Nightlife
24 Task Force.

25 MAYOR DERMER: Okay. Steve,

1 welcome.

2 MR. POLISAR: There's -- when
3 there's a lot of money and power and
4 elections, there's always going to be --
5 there's always a lot of hysteria around
6 them, a lot of interest, however, I can
7 tell you from -- as chairman of the
8 nightlife committee that if you just
9 isolate this one particular ordinance from
10 the responsible nightclub owners and
11 restauranteurs, if you ask them
12 individually or at the Nightlife Task
13 Force, they will tell you that they're not
14 opposed to legitimate legislation that
15 deals with legitimate problems. There's,
16 in fact, an acknowledgment that residents
17 have some legitimate problems below 5th
18 Street.

19 When you circumscribe the ordinance
20 to grandfathering in the present
21 businesses, businesses that have made their
22 investments, businesses -- businesses that
23 have been down there for years, that have
24 established the area, that does not create
25 a problem.

1 What I think is missing the point
2 here, though, is that the real problem that
3 needs to be acknowledged isn't -- is -- is
4 whether or not this is in fact it, because
5 what I think the nightlife industry has
6 really been expressing and maybe not in the
7 correct words up to now is, is this the --
8 is this what the residents are going to be
9 satisfied with, we grandfather this in, or
10 what's next.

11 I mean, the fear out there, and
12 I say this to the city commission is not
13 this ordinance that's going to be
14 grandfathered in. I talk to people on the
15 street all the time, nobody's concerned.
16 No rational person is worried about
17 something if they're grandfathered in, and
18 nobody from the nightlife industry is
19 thinking about the great future of Miami
20 Beach and what's going to happen.

21 They're worried about what's
22 tomorrow and what's in their business, but
23 what they are worried about isn't this
24 particular ordinance, they're worried about
25 where is it going to stop.

1 Yes, there is a shift of balance of
2 power in the city, and it hasn't been
3 expressed by the city up to now as to the
4 assurance to our nightlife industry that
5 we're going to pass some responsible
6 legislation that makes sense, but we're not
7 going to start passing legislation that
8 is -- if it's not broke, you don't have to
9 fix it.

10 And so what we would really like to
11 know out here in the nightlife industry is,
12 is our future assured or is there an
13 undercurrent from the fact that, yes,
14 there's new residents from the new
15 high-rises that they're getting power.

16 Are you going to ask next year from
17 the residents, are you going to roll back
18 the hours? Where does it stop, we need to
19 know.

20 MAYOR DERMER: We have a couple of
21 questions, Commissioner Cruz, and then
22 Garcia.

23 COMMISSIONER CRUZ: Hi, Steve.
24 First on the shifting of the balance of
25 power, the balance of power has not

1 shifted. I think this city has
2 historically been run or has elected its
3 officials from the residential community.
4 Middle Beach has historically held the
5 political power in this city. Any analysis
6 will show you that.

7 If there is a shift of power, it's
8 that it's being an imbalance because you
9 now have a huge amount of residents moving
10 into South Beach and they're going -- South
11 Pointe and that's going to have an impact.
12 That said, though, that's not at --

13 MR. POLISAR: I disagree.

14 COMMISSIONER CRUZ: That's not the
15 issue.

16 MR. POLISAR: Simon, I disagree with
17 you on that, because there's been
18 acknowledged even in the press and even
19 yourself acknowledged in the press that
20 there's a shift in balance, that there's
21 more residents.

22 COMMISSIONER CRUZ: No, let --

23 MR. POLISAR: They have our votes --
24 and wait, wait, let me finish.

25 COMMISSIONER CRUZ: I know where

1 you're going, though.

2 MR. POLISAR: And up until now, up
3 until now we have had I think a fair
4 balance. Yes, there's been issues like
5 Middle Beach and so forth, but those issues
6 were relegated to different things than
7 what we're dealing -- Mid-Beach never
8 concerned itself about the hours and what's
9 happening now with the nightclubs below 5th
10 Street.

11 So it has changed, because these
12 people below 5th Street didn't exist. The
13 fact is that the nightclubs settled that
14 down there and the rest of South Beach.
15 We've heard it before, but they're like the
16 Indians, and what we're concerned about is
17 now that the settlers are coming in and
18 they've got 160 acres and a mule, are
19 we going to be pushed out and put on the
20 reservation, and that's what we don't want.

21 COMMISSIONER CRUZ: Steve, let me
22 put it to you this way -- let me put it to
23 you this way, I have -- I've been following
24 the nightlife here for a very long time,
25 I'm a very strong supporter of the

1 nightlife here for different reasons than
2 what you support it for. I think it gives
3 us our soul. It gives a lot of what drives
4 this city, you know, it really has enhanced
5 what we have with the beaches and the like,
6 but please realize one thing. The zoning
7 down there has historically been
8 residential.

9 Those buildings that have now gone
10 up there were originally planned. When
11 South Pointe Tower was built, there were
12 four other buildings that were projected to
13 go up there. Rebecca and Hope were already
14 up, and that had been in the 1979
15 redevelopment agency was planned as being
16 the niche of Miami Beach that was all going
17 to be residential.

18 That a couple of clubs may have
19 opened up there because it was desolate as
20 it was going through a transition and the
21 RDA was buying up land in order to
22 redevelop it into a residential community,
23 fine, but that is the reality. Let's not
24 even go there.

25 MR. POLISAR: You know what you're

1 saying to me, Simon, you're absolutely
2 confirming my worse fears, and I'll tell
3 you why.

4 COMMISSIONER CRUZ: No, no, Steve --

5 MR. POLISAR: Because instead of
6 saying to this community --

7 COMMISSIONER CRUZ: But I didn't get
8 to where I'm going --

9 MR. POLISAR: -- that there's
10 balance, you're taking a one-sided
11 position.

12 COMMISSIONER CRUZ: No, I'm not.
13 Let me get to the position I'm going to
14 now. All right. The clubs down there that
15 are there are going to be protected. There
16 is no issue. Now, if there has been, and
17 you're saying -- and you made a very valid
18 point by saying this legislation doesn't
19 concern us because it's rational
20 legislation.

21 MR. POLISAR: Correct.

22 COMMISSIONER CRUZ: It's we fear
23 what's coming down the line, right?

24 MR. POLISAR: Correct.

25 COMMISSIONER CRUZ: And you're

1 absolutely right, but who has started a lot
2 of those rumors and who started a lot of
3 the hysteria about this was not us. Okay?
4 So it was no us.

5 MR. POLISAR: Wait, wait, I don't
6 want --

7 COMMISSIONER CRUZ: I heard about
8 the two o'clock rollback on the hours, and
9 I'm saying where did this come from.

10 MR. POLISAR: Simon.

11 COMMISSIONER CRUZ: I first heard
12 it from David Wallack as a friend came to
13 me and said where is this coming from, and
14 I stated from this dais that I am not in
15 favor of rolling back hours. The five
16 o'clock licenses will remain at five
17 o'clock. I am not interested in
18 (Inaudible.)

19 MR. POLISAR: I have to correct you
20 on one thing, Simon, I have to correct you,
21 because --

22 COMMISSIONER CRUZ: (Inaudible.)

23 MR. POLISAR: The record will
24 reflect. This isn't personal, but the
25 record will reflect that at a hearing not

1 too long ago when the residents were in the
2 vast majority of the assembly, the
3 atmosphere was very much -- and statements
4 were made while some of the nightclub
5 people were in the room, that perhaps
6 we should, in fact, examine rolling back
7 the hours for all of the -- of the
8 nightlife industry. Now, let me say this,
9 I've been around the city a long time, and
10 I know the context -- I'm not saying you
11 said it.

12 COMMISSIONER CRUZ: Did I say it?

13 MR. POLISAR: No, but the record
14 will reflect it was said.

15 F: That's correct, that
16 (Inaudible.)

17 MR. POLISAR: Now, what does that --
18 what does that say? I as a guy that's been
19 around for a long time took it in context,
20 there's a lot of residents, you know, it's
21 water off a duck's back. However, there
22 are other people, and what those comments
23 did was give the extremist elements in the
24 nightlife industry a sword, and the truth
25 is, despite the fact, Simon, that they were

1 wrong in disseminating misinformation, the
2 fact remains that when those statements are
3 made, there wasn't -- in principle they
4 were correct in rallying their troops to
5 the defense of the industry, because
6 nothing later was said from this body that
7 would have dispelled that notion, so it was
8 easy for a sword to be handed out and a
9 rumor to start.

10 And what I would like to propose is
11 that in the future, because this city
12 deserves better than -- than what we've
13 been enduring up to now, and I mean, I'll
14 go even one further. I had a meeting with
15 Mr. Gomez, I had a meeting with Bob
16 (Inaudible), we have had some very rational
17 and productive meetings.

18 The idea that we're going to a
19 workshop is a terrific, I think,
20 suggestion, and we're glad that we adopted
21 it, but in the future, to avoid the
22 schizophrenia that's been circulating,
23 we need to be making statements along the
24 lines that, yes, we have a tremendous
25 residential upsurge. We also have a very

1 important viable nightlife industry. Let's
2 come together and resolve these matters
3 rationally so that we can avoid -- and
4 you're right, these were unfair, unfounded
5 statements.

6 COMMISSIONER CRUZ: I think
7 (Inaudible.)

8 MR. POLISAR: I apologize for the
9 nightlife industry in that, but the fact is
10 the principle remains the same.

11 COMMISSIONER CRUZ: And I think
12 that's where we're getting to. But that's
13 where we're getting to, so people
14 understand that there's not an assault on
15 the nightlife. About a week or a week and
16 a half ago there was an entire week on the
17 travel channel, and it centered around
18 nightlife in South Beach. Do you know what
19 publicity that gave us? That was
20 tremendous and very good publicity.

21 So there is no doubt that that
22 industry is extremely important. It may
23 not be in dollars cents as Eugene Woodard
24 stated, it may not be at that point, but
25 it's important, because it gives us our

1 soul, but the dollars are predominantly and
2 the preponderance of them come from the
3 residential sector, but we have to work
4 together. What we don't want is the
5 hysteria that was created before.

6 MR. POLISAR: Let me just say this,
7 Simon, if we have so -- and I agree with
8 you, the dollars are coming from the --
9 it's important that we have the dollars,
10 but why can't we take some of those dollars
11 and solve some of the practical problems
12 with them? If we've got so many dollars
13 coming in from this now source, why
14 can't some of the people -- two practical
15 suggestions.

16 People complain about the urination,
17 why can't we build some bathrooms back
18 there?

19 MAYOR DERMER: Look --

20 MR. POLISAR: They're worried about
21 flyers, let's (Inaudible.)

22 MAYOR DERMER: Hang, hang, hang on.
23 We're really digressing.

24 MR. POLISAR: You're right.

25 MAYOR DERMER: This is an ordinance

1 dealing with, outdoor noise (Inaudible.)

2 MR. POLISAR: Correct, you're right.

3 MAYOR DERMER: Commissioner Garcia,
4 go ahead.

5 VICE MAYOR GARCIA: Yes, okay.

6 Again, Steve, you know, you and I have
7 known each other probably longer than
8 anybody else around here.

9 MR. POLISAR: We put our football
10 uniforms (Inaudible.)

11 VICE MAYOR GARCIA: That's right,
12 going back to 1961.

13 MR. POLISAR: Correct.

14 VICE MAYOR GARCIA: This guy was a
15 four letter sportsman, one of the finest
16 athletes ever to come out of Miami Beach
17 High.

18 MAYOR DERMER: Did you just call him
19 a four letter word?

20 VICE MAYOR GARCIA: Four letter
21 athlete.

22 MAYOR DERMER: Four letter sport.

23 VICE MAYOR GARCIA: Four letter
24 sports.

25 MR. POLISAR: Thank you, Luis.

1 VICE MAYOR GARCIA: You know, I --
2 I respect you, and Simon, I respect you.
3 In a way you're both right. Okay? Back a
4 couple of meetings ago, neighbors came here
5 and they complained, you know, and some --
6 some statements were made.

7 The fuel was fanned even more when
8 it went to the planning board, because
9 again, all of the decisions of, I guess,
10 every board are coming from the planning
11 board. I guarantee you, Simon, like me and
12 probably most of the members of this
13 commission will -- probably will -- not
14 probably, they will in favor a roll back to
15 the two o'clock. I think that at the same
16 time -- at the same time as I look at this
17 ordinance, this ordinance really, you
18 know --

19 MAYOR DERMER: This is going to be a
20 long meeting.

21 VICE MAYOR GARCIA: (Inaudible.)
22 I mean, (Inaudible) however, it's not as
23 ominous as it could be for -- you know, for
24 existing places, however -- however, and
25 this is what -- this is what we -- that

1 we're concerned. You're concerned of where
2 the industry is heading.

3 MR. POLISAR: Correct.

4 VICE MAYOR GARCIA: And I think --
5 I think we have taken a tremendous step by
6 getting a workshop for the hotels which
7 (Inaudible) you know, I -- when -- when the
8 hotels met, you guys -- you know, the
9 nightlife was invited, and the -- you know,
10 the participation was very little. There
11 were very few people in there.

12 This is a time for the nightlife,
13 the hotels, and the neighbors to come
14 together, you know, and work out a plan,
15 work out a plan that can help -- that --
16 that will govern for the next ten years.

17 MR. POLISAR: Luis, we agree with
18 that.

19 VICE MAYOR GARCIA: Otherwise, we're
20 going to be up from prosperity to -- to be
21 in a nursing home city back and forth. So
22 you know, we -- we got to go like this,
23 we gonna to go up and down.

24 MR. POLISAR: That is the sentiment
25 that we're looking for, because, look,

1 we're not against the residents, we're not
2 against this particular ordinance, we just
3 wanted to see that there was the respect
4 out there for the industry and that you're
5 going to work with us, and we're not going
6 to be subject to every year we're going to
7 be rolled back.

8 MAYOR DERMER: Okay. Let's --

9 COMMISSIONER BOWER: (Inaudible.)

10 VICE MAYOR GARCIA: I think if you
11 have respect for this commission, probably
12 you get (Inaudible) to get the ordinance
13 they're -- they're requesting.

14 MAYOR DERMER: Commissioner --
15 Commissioner Bower.

16 VICE MAYOR GARCIA: And we -- and
17 we move forward.

18 COMMISSIONER BOWER: Steve, I --
19 I -- you know, I'm the one (Inaudible)
20 looking for my glasses, because I can't see
21 you. I just want to assure you also that
22 I believe that this is a community that
23 needs to respect each other. It has never
24 occurred to me to roll back or not roll
25 back, but when it gets out of whack from

1 one side or the other, it doesn't matter
2 which side, then we have these
3 confrontational issue.

4 I don't want to kill anybody,
5 I don't want to put anybody out of
6 business. That is not even my nature as --
7 as a person, but I do think that the one
8 most important thing that we need any -- in
9 any relationship is respect for each other.

10 MR. POLISAR: You're correct.

11 COMMISSIONER BOWER: And when the
12 lack of respect starts swinging one way or
13 the other, these are the issues. I want to
14 make clear to you that I'm not here -- I,
15 you know, speak for the residents many
16 times up here because I speak their --
17 their side of the story, but I don't want
18 to kill anything that has made Miami Beach
19 what it is today. So I just want you to
20 know.

21 MR. POLISAR: I think we needed to
22 hear that, and I appreciate --
23 we appreciate it.

24 MAYOR DERMER: Okay. Thank you,
25 sir. I appreciate your comments, Steve.

1 MR. POLISAR: Thank you.

2 MAYOR DERMER: Cecilia Glasser
3 followed by Jeff Bercow. Cecilia?

4 MS. GLASSER: Guard gate.

5 MAYOR DERMER: Oh, that's coming a
6 little later. All right. Guard gate we'll
7 deal with later.

8 All right. Jeff Bercow, please, and
9 we are going to go after Jeff, and I really
10 suggest to just really focus on the issue
11 and wrap this thing up already. I know the
12 commission getting antsy, Jerry Pinard.
13 If what's been said already and you want to
14 pass, please feel free. Go ahead.

15 MR. BERCOW: Thank you, Mr. Mayor,
16 commissioners, Jeffrey Bercow with Bercow
17 and Radell, 200 South Biscayne Boulevard,
18 and I also live in Miami Beach. I'm here
19 today representing Arden Savoy Partners,
20 LLC, the owners of the Arlington and Savoy
21 hotels.

22 As I indicated three weeks ago when
23 I appeared before you, and I promise not to
24 give you any poison pills today,
25 we strongly support the proposed ordinance

1 as it relates to open air and outdoor
2 entertainment establishments in the
3 redevelopment area.

4 In particular in the R-PS4 district
5 where we're located, we know an
6 outdoor/open air entertainment
7 establishment would not be approved by the
8 planning board, and we believe it's not an
9 appropriate use where we're located
10 surrounded by residential buildings.

11 On the other hand, we do think that
12 having an indoor neighborhood impact
13 establishment within our project that would
14 be accessed only from the interior lobby
15 and not from the street would be an
16 appropriate use for the area, especially
17 for a resort hotel located on the ocean.

18 What's a neighborhood impact
19 establishment? Well, it's defined in the
20 code, and Kent Robbins didn't get
21 it exactly correctly a few minutes ago, but
22 suffice it to say that, for example, Nobu
23 is a neighborhood impact establishment and
24 has been approved by the planning board as
25 such.

1 Unfortunately, the code as written
2 today wouldn't even allow us to apply to
3 have a restaurant like Nobu in our hotel.
4 Today you have to have a 250 room hotel in
5 the R-PS4 district just to apply for a
6 neighborhood impact establishment approval.
7 The administration recommendation notes
8 that there is no hotel of that size in the
9 R-PS4 district.

10 We understand that you need to have
11 a minimum number of rooms because you don't
12 want to have a large restaurant or a
13 nightclub that overwhelms some of these
14 smaller hotels in the area, but we think
15 that the appropriate minimum is 50 rooms,
16 and we've gotten a booklet from the Greater
17 Miami Visitors and Convention Bureau on
18 boutique hotels, and we've excerpted about
19 a dozen hotels from that booklet, and I'd
20 like to put -- pass that out at this point.

21 COMMISSIONER BOWER: May I ask you a
22 question?

23 MR. BERCOW: Yes.

24 COMMISSIONER BOWER: I don't have a
25 problem looking at this issue if it goes to

1 the team -- you know, if you bring back an
2 amendment. Do you feel that it has to be
3 done today or can it come back as an
4 amendment to this ordinance and go through
5 the -- through the routine way that all
6 these ordinance go through? I mean, is
7 that something that -- that --

8 MR. BERCOW: I think it's
9 appropriate and it's been noticed before
10 you today, and I think the ordinance as
11 drafted, the code as drafted is
12 inappropriate. It's overly broad, because
13 you have a 250 room floor for these
14 neighborhood impact establishments where
15 there, quite simply, is not any 250 room
16 hotel in the district today.

17 COMMISSIONER BOWER: But --

18 MR. BERCOW: So you've got an --
19 you've got an ordinance or code provision
20 that's not appropriate.

21 COMMISSIONER BOWER: I understand
22 that, but --

23 MAYOR DERMER: She's asking is there
24 time sensitive issues with this (Inaudible)
25 in your information?

1 MR. BERCOW: It is -- it is not time
2 sensitive for us, but I think that it is
3 appropriately before you today. Let me --
4 let me just finish on the -- I'm sorry.

5 COMMISSIONER BOWER: That's okay.

6 MR. BERCOW: No, no.

7 COMMISSIONER BOWER: It's okay.

8 I was just going to say that, you know,
9 we may be able to reach a consensus on this
10 issue if it goes the routine and
11 appropriate way through the planning board
12 and whatever it is that it has to be done.
13 Instead, I'm going to have to make up my
14 mind, because the rest of the community was
15 not involved at this moment, you know,
16 I just don't feel comfortable voting on
17 that issue.

18 So I was just trying to give you
19 the -- the benefit that if you come the
20 right way and everything is approved and
21 everybody is happy and a consensus is
22 filled, maybe you can have that, but not
23 today. I don't know (Inaudible.)

24 MR. BERCOW: Well, quite frankly,
25 and I've spoken to Mr. Del Vecchio, and

1 I've spoken to Mr. -- Dr. Sunshine, and
2 others, and I don't think we can talk for
3 three more months and have workshops and
4 public hearings. I, quite frankly --

5 MAYOR DERMER: Well, that's for
6 sure.

7 MR. BERCOW: -- don't believe they
8 are going to agree with our position, nor
9 do I think they're going to agree with the
10 staff position. I just want to wrap up and
11 make a point about these 50-room hotels.

12 What I'm trying to show you in this
13 booklet is that you have some rather
14 substantial hotels that are between 50 and
15 100 rooms like the Sagamore, the Victor,
16 Nash, The Hotel, that are significant
17 enough hotels that will not be overwhelmed
18 by having a neighborhood impact
19 establishment in them. We are not asking
20 for this as of right, we are simply asking
21 for the right to apply for a neighborhood
22 impact establishment approval to the
23 planning board in the future.

24 MAYOR DERMER: I thank you for your
25 comments.

1 COMMISSIONER GROSS: I just want to
2 make one comment.

3 MAYOR DERMER: Sure.

4 COMMISSIONER GROSS: The examples
5 that you gave, I don't think those are
6 neighborhood impact establishments. You
7 can have 299 people in a restaurant --

8 MR. BERCOW: I only need one --

9 COMMISSIONER GROSS: -- in your
10 hotel in the Arlington/Savoy and not need a
11 neighborhood impact establishment. 299
12 occupant load. That's pretty big.

13 MR. BERCOW: I only gave one
14 example.

15 COMMISSIONER GROSS: Well, the Nash,
16 I don't think the Nash is a neighborhood
17 establishment.

18 MR. BERCOW: No, no, no,
19 (Inaudible.)

20 COMMISSIONER GROSS: And neither is
21 the Sagamore.

22 MR. BERCOW: That's not what I'm
23 saying.

24 COMMISSIONER GROSS: But you're --

25 MR. BERCOW: I'm saying that those

1 are -- you misunderstood me. That those
2 are hotels --

3 COMMISSIONER GROSS: What I'm saying
4 is the way -- but Jeff, the way the
5 ordinance is drafted now, you could put 299
6 people in a restaurant in the Arlington and
7 the Savoy and not have to change this
8 ordinance whatsoever. It's only when the
9 put the 300th person, and, you know,
10 I think it's (Inaudible.)

11 MR. BERGOW: Commissioner, we don't
12 want to play the game that Joya and Pure
13 has played by segregating the two uses so
14 that collectively they're less than 300.
15 If we want to have a quality restaurant
16 come in like -- like Nobu or like Emeril's
17 that's now coming in. I've heard that
18 there's a Chinese -- famous Chinese
19 restaurant from New York that's looking
20 down here.

21 And if they say we want to have 300
22 to 400 people as an occupancy load in your
23 project, because we think this is the
24 perfect location for it, and if we can
25 convince the planning board that we've

1 mitigated our impacts in a way that is
2 sensitive to the R-PS4 district and
3 recognizes what's there, why shouldn't we
4 be allowed to apply? And by (Inaudible.)

5 COMMISSIONER GROSS: Well, if you're
6 asking me, I would say that 300 is enough
7 in that particular residential
8 neighborhood. That's why.

9 MR. BERCOV: Okay.

10 COMMISSIONER GROSS: So, you know,
11 you --

12 MR. BERCOV: You say that in the
13 abstract without even having the proof
14 before you. I mean, we can show how we can
15 mitigate our impact.

16 MAYOR DERMER: Jeff, let's not --
17 let's wrap that up and let's get moving to
18 our next speaker.

19 MR. BERCOV: I'm done.

20 MAYOR DERMER: All right. Thank
21 you, sir. Let us go to David Kelsey and
22 then David Haber, and then we'll go -- yes,
23 we'll get everybody. I got everybody's
24 name down here. We won't forget anyone.
25 I know you came out.

1 MR. KELSEY: Thank you, David
2 Kelsey, South Beach Hotel and Restaurant
3 Association. This ban on outdoor and open
4 air entertainment, I think we need to be
5 clear on this. This really does not effect
6 some existing venues, Nick's, for instance,
7 it doesn't effect Opium, for instance, but
8 it probably does effect Penrod's and Nikki
9 Beach, any other establishment that now has
10 some open air component, even Nemo's cafe
11 is open air, but they don't have
12 entertainment.

13 The concerns about the size of
14 hotels, clearly it doesn't make much sense
15 if you've got a 250 room threshold and you
16 have no 250 room hotels. It should reflect
17 the makeup, I think, of the historic
18 district and the size of those hotels.

19 What I'm afraid is happening here is
20 the wrong message is going out and the
21 wrong problem is trying to be addressed.
22 The message goes anywhere from -- from
23 being against nightlife to basically
24 perhaps not buying condos in the South
25 Pointe area because the quality of life

1 isn't -- doesn't justify living there. The
2 problem is not open air or outdoor
3 entertainment. The problem is the music or
4 noise, if you want to view it that way,
5 that emanates from that that someone
6 somewhere else is hearing. It's a noise
7 problem.

8 If you could have a wedding
9 reception on the pool deck of the Marriott,
10 and you asked this question the last
11 commission meeting, but unfortunately, you
12 asked it as could you have a wedding. You
13 could have a wedding. It's a solemn
14 occasion, vows are spoken, but you couldn't
15 have a reception, because you couldn't have
16 a band and dancing and drinking, and
17 that's -- that's where the issue comes in.

18 There's no -- for instance, no
19 cutoff time. It's sort of like an absolute
20 prohibition in that it doesn't say you
21 could only have outdoor entertainment
22 during the day or up until eleven o'clock
23 or until two in the morning. It just says
24 you can't have it at all, and you can't get
25 a conditional use permit under those

1 conditions or, I'm wondering, could you
2 even get a special event permit.

3 What does that do to some place like
4 Opium and Nikki Gardens, where are they in
5 this situation?

6 COMMISSIONER CRUZ: As I understand
7 it, they're exempt.

8 MR. KELSEY: Well, I don't think so.

9 COMMISSIONER CRUZ: It doesn't --
10 you know --

11 MR. KELSEY: And those -- those are
12 questions that I think --

13 COMMISSIONER CRUZ: They're
14 grandfathered in. Why --

15 COMMISSIONER GROSS: Well, Simon,
16 Simon, we need to clarify that, because
17 it's been spoken a lot of times.

18 COMMISSIONER CRUZ: Yeah, because --

19 COMMISSIONER GROSS: You know they
20 will be grandfathered for whatever license
21 they currently hold. If they want to
22 change the use and apply for a new license,
23 then the new license would come under the
24 new ordinance, but anybody with an existing
25 license is allowed to do what they're

1 allowed to do understand that license.

2 MR. KELSEY: The question is what
3 is -- what is their license, yeah.

4 COMMISSIONER BOWER: About Nikki
5 Beach -- Nikki Beach --

6 COMMISSIONER CRUZ: See, David, and
7 here's the problem we've had, and, you
8 know, I've addressed it with Steve, and --
9 and, you know, Steve was, forthright, and
10 he said, look, we apologize for the
11 misinformation or getting, you know, a
12 little too historical, but this that you
13 have just stated --

14 MR. KELSEY: Well, I don't apologize
15 for that (Inaudible.)

16 COMMISSIONER CRUZ: -- but you --
17 no, because you have been predominantly the
18 one that's disseminating that sort of
19 misinformation.

20 MR. KELSEY: Simon, I have -- I have
21 stood up for continuing our 5 a.m. licenses
22 for the last five years. It's come before
23 the planning board at least twice, and
24 it was mentioned by two people sitting on
25 this commission on April 9th. It is time

1 to maybe look at rolling back the hours.
2 Those things concern people. They concern
3 people for their investments, they concern
4 people for their jobs.

5 We're concerned for tourism as well.
6 This is our business and nightlife is our
7 key ingredient. It makes us different from
8 Key Biscayne, it makes us different from
9 Delray Beach.

10 We're concerned about the sentiments
11 that were expressed. We told you that at
12 the last commission meeting. We're trying
13 to work on this. The association has
14 scheduled a workshop to deal with the issue
15 of restaurants that have accessory uses of
16 entertainment and dancing and 5 a.m. liquor
17 licenses. We're doing that next Thursday.

18 You have scheduled a workshop to
19 deal with the broader ramifications of this
20 ban, which could be citywide, and that's
21 appropriate, but what happened on April 9th
22 basically sent a shock through the industry
23 in hearing so much sentiment that
24 threatened the business community that
25 deals with nightlife and tourism. And

1 that's why we reacted, that's why we came
2 last -- the last commission meeting, and
3 that's why many of us are here again today.

4 We want to find a way to work these
5 problems out rationally. We don't want to
6 find laws being passed that just go across
7 the board and put people out of business.
8 That's not (Inaudible.)

9 VICE MAYOR GARCIA: Mr. Mayor.

10 MAYOR DERMER: Yes,
11 Commissioner Garcia.

12 VICE MAYOR GARCIA: And David,
13 that's -- that's why we're going to have a
14 workshop.

15 MR. KELSEY: Right.

16 VICE MAYOR GARCIA: The thing about
17 the workshop is that you have to
18 participate. The hotel industry can only
19 appear, and the nightlife industry
20 (Inaudible.)

21 MR. KELSEY: No, the hotel and
22 restaurant association is holding a
23 workshop next Thursday.

24 VICE MAYOR GARCIA: Yeah, but, you
25 know, the city is going to be holding a

1 workshop the next couple of weeks.

2 MR. KELSEY: And we will come to
3 your workshop. It's appropriate. That's
4 what we wanted.

5 VICE MAYOR GARCIA: You know,
6 everybody --

7 MR. KELSEY: That's what we wanted.
8 We asked for that at the last meeting,
9 if you'll recall.

10 VICE MAYOR GARCIA: Well, you know
11 what, and I brought it up to the
12 commission, and it got approved, and it got
13 passed, and it's going to take -- it's
14 going to take place in June sometime, you
15 know, and that's the time when we can get
16 assurances --

17 MR. KELSEY: Well, I had also asked
18 you earlier today --

19 VICE MAYOR GARCIA: -- the
20 assurances for the industry.

21 MR. KELSEY: -- if this particular
22 issue which is part of this same group of
23 ordinances and regulations can be part of a
24 workshop, but you decided against that.

25 VICE MAYOR GARCIA: I didn't decide

1 against it. That was --

2 MR. KELSEY: Well, the mayor decided
3 against it.

4 VICE MAYOR GARCIA: The mayor
5 decided (Inaudible.)

6 MR. KELSEY: We're just concerned
7 that we're -- we're a party to what you're
8 doing, that we're at the table, that these
9 things are not happening and being dictated
10 to us.

11 MAYOR DERMER: Thank you. I thank
12 you for your comments David. Let us move
13 on now to David Haber. Welcome. I haven't
14 seen you since the (Inaudible.)

15 COMMISSIONER GROSS: Mr. Mayor, can
16 we just have the head of the planning
17 department --

18 MAYOR DERMER: Sure.

19 COMMISSIONER GROSS: -- clarify on
20 the record so there is no ambiguity --

21 MAYOR DERMER: Yes.

22 COMMISSIONER GROSS: -- about this
23 grandfather issue in terms of existing
24 licenses.

25 MR. GOMEZ: Obviously, you're --

1 you're quite correct in saying earlier that
2 whatever the license holder has specified
3 in that approval will be a legal conforming
4 if this ordinance were to be enacted. A
5 couple of places that were mentioned,
6 I think Monty's, Opium, and Taverna Opa and
7 Penrod's, all of those currently have,
8 according to the research that was prepared
9 for the report, a dance and entertainment
10 component to their license.

11 So to the extent that Penrod's has
12 an outdoor area or Monty's has an outdoor
13 area, they already have, also, the dance
14 and entertainment component allowed, so
15 they would be grandfathered in if this
16 ordinance were to be passed.

17 And again, just to remind the
18 commission, the ordinance right now, the
19 way it reads right now in the commercial
20 districts, outdoor entertainment is a
21 conditional use.

22 That means that if you're playing
23 music at a level that interferes with
24 normal conversation but in no instance are
25 violating the Dade County noise ordinance,

1 because that's the upper threshold, that
2 narrow band is the province of the
3 conditional use, we're just removing that.
4 You can still have outdoor music as long as
5 it's not interfering with normal
6 conversation.

7 We've in essence removed the
8 conditional use approval for what is that
9 narrow band of, I guess, loud background
10 music, because that approval does not allow
11 you to violate the Dade County noise code.
12 That's all we're talking about here.

13 Events in pool decks of hotels that
14 are occasional in nature and do not violate
15 the Dade County noise ordinance.

16 COMMISSIONER GROSS: Like a wedding.

17 MR. GOMEZ: Like a wedding reception
18 in my opinion are not a conditional use
19 today, therefore, they wouldn't be
20 precluded from this ordinance. This
21 ordinance is trying to address those
22 outdoor areas that become a regular chronic
23 outdoor type of entertainment venue, and
24 it's just banning it in this particular
25 area like you've banned it in other areas

1 of the city.

2 MAYOR DERMER: Thank you, sir.

3 Mr. Haber, and then we'll call about Juan
4 Rodriguez.

5 MR. HABER: David Haber representing
6 Portofino Towers Condominium Association.
7 I've been before this commission a number
8 of times on this issue since January 2003,
9 and I appreciate the opportunity to present
10 this matter again today, and I apologize
11 for the length of time I may take, but
12 having waited three hours and 15 minutes.

13 MAYOR DERMER: I know you've waited,
14 David, but if you can simple (Inaudible.)

15 MR. HABER: I will narrow it on the
16 issues that have not been discussed.

17 MAYOR DERMER: Thank you.

18 MR. HABER: First of all, at the
19 April hearing, this concept that people
20 were going to roll back hours and this fear
21 factor that has been created not by the
22 residents but by the business interests in
23 the nightlife community which is akin much
24 to a paranoia, was in relation to the fact
25 that we had just come through the music

1 conference where we had six straight nights
2 of pounding music on South Beach and
3 violations galore, a brazen disregard for
4 the laws and ordinances of this city and
5 county, and more importantly, we had a
6 situation where we had just recently passed
7 18 days which allowed the nightclubs to
8 stay open until seven o'clock in the
9 morning.

10 So when the roll back was being
11 discussed, one of the issues that was being
12 discussed was this rollback as it related
13 to the 18 days and the 7 a.m. going back to
14 5 a.m. I don't think anybody in their
15 right mind was contemplating taking
16 existing nightclubs, ruining their
17 business, and putting them out of business
18 by having them close at two o'clock in the
19 morning.

20 Surely that was not the residents'
21 intention, that is not my client's
22 intention, and of the 20 people you've
23 heard from today from the neighborhood
24 associations and from individual residents,
25 and the 30 people you heard from in April

1 and the 30 people you heard from in January
2 and February, not one of them talked
3 negatively about the nightlife industry,
4 not wanting nightlife, not liking
5 nightlife, and not wanting to go to those
6 same nightclubs that are trying to keep
7 pounding bass in their ears to all hours of
8 the night.

9 In terms of a democracy lesson, I'm
10 sure all of you commissioners went to
11 school and are very well aware that liberty
12 for another person ends where it infringes
13 upon my liberty. And therefore, it's very
14 clear that whether you punch a person in
15 the nose or whether you pound bass in my
16 ear until all hours of the night is still
17 an assault. An assault by any other name
18 is still an assault.

19 This legislation is proper
20 legislation. It's unfortunate that the
21 situation is where it is today, and it is
22 as Commissioner Steinberg had stated about
23 four and a half hours ago with relation to
24 the valet parking situation, a brazen
25 disregard for our laws and ordinances.

1 One commission meeting ago both
2 Commissioner Garcia and Commissioner
3 Steinberg mentioned why do we need anymore
4 laws, why can't we just enforce the ones
5 we had. If we had a situation different
6 than what we currently have, and if we can
7 have club owners come in in areas and keep
8 indoor entertainment, we wouldn't have
9 these problems, but we have people wanting
10 to open up 50-room hotels and then have 350
11 people come in and do a discotheque in the
12 middle of the hotel. That's not
13 appropriate.

14 I think what Commissioner Gross had
15 stated earlier which is, you know what, 299
16 people is enough. This is a South Pointe
17 community. This was always intended for
18 the last 25 years to be residential, and
19 we have to stick with the character of the
20 community. There are already 31 places
21 there to drink and eat or go out at night.
22 We don't need another 50 in that small
23 area.

24 But that's not to say there aren't
25 places north of 6th Street to go, nor does

1 it say anything or send any negative
2 message to the community that has for some
3 reason decided upon their own to take this
4 as a message from the commission that
5 someone is against their business
6 interests, that the sky is falling, and
7 that otherwise there is a reason for them
8 to be concerned that either the residents
9 don't want them in the business community
10 or alternatively that the commission
11 doesn't want the business community. It's
12 just the opposite.

13 VICE MAYOR GARCIA: David, I thought
14 I had spoken everything, but since you
15 mentioned my name, I feel I have to --

16 MAYOR DERMER: You don't have to.

17 VICE MAYOR GARCIA: Yeah, I have to.
18 It's my nature, what can I tell you.
19 David, probably the failure -- I mean,
20 probably the problem that we have here has
21 been the failure to enforce the existing
22 laws that we have, because plain and
23 simple, if we would have enforced the
24 ordinance -- the noise laws as mandated by
25 the county, we wouldn't have this problem

1 at all.

2 Had we enforced -- had we patrolled
3 the area a little bit to prevent urinating
4 on the streets and whatever, these things
5 wouldn't have happened at all. So
6 basically what we have here is a problem of
7 enforcement.

8 You know, I -- I'm going to tell you
9 one thing, the character of the
10 neighborhood is changing, and that's why
11 I would favor some type of curtailment for
12 now, however -- however, you know, let's
13 enforce what we have on the books before
14 we go out and, you know, penalize the
15 people.

16 MR. HABER: I hear what you're
17 saying, Commissioner Garcia, but I have to
18 say to you in response to that comment,
19 that the resources of this city, which
20 I hear these same commissioners tell me are
21 so thin every time someone comes here for
22 money and every time the police says I have
23 to share from here to here to here,
24 if we're going to send the police resources
25 to keep south of 5th Street on South Pointe

1 on these same issues rather than passing
2 rational legislation to deal with the
3 issues, then we're not using our resources
4 correctly.

5 VICE MAYOR GARCIA: Well, you know,
6 we are -- we are also not using our
7 resources, and this is one that I tend to
8 agree with the mayor on the RDA. We're
9 collecting a lot of taxes, and we cannot
10 reinvest in police and community, and I
11 understand there's going to be (Inaudible)
12 to be available.

13 So basically what's happening on
14 South Beach is you have been paying taxes,
15 but the taxes to provide police and
16 especially fire, because I tried to get
17 extra units on the south end back when
18 I was the fire chief, and we couldn't do
19 it because the RDA wouldn't allow it.

20 So I mean, that's -- that's monies
21 that, yes, you pay taxes, but you know
22 what, they don't (Inaudible.)

23 MR. HABER: But commissioner, the
24 point here of this legislation is even at
25 the last hearing when all the interests of

1 the nightlife industry came together, so to
2 speak, not one of them spoke against the
3 ordinance that is before you today. They
4 spoke about perspective future, what might
5 happen. That's what Steve Polisar talked
6 about today. He said we're not worried
7 about today, we're worried about what might
8 happen in the future (Inaudible.)

9 VICE MAYOR GARCIA: And we're taking
10 steps to try to work our dialogue in the
11 future. That -- that was earlier today.

12 MR. HABER: And we should be and
13 we are trying to and we should continue to,
14 but when the nightclub industry, where they
15 lose credibility, complete credibility with
16 the residents of this city and where they
17 should lose credibility with this
18 commission is in two places, that there has
19 been a fair balance up until now, because
20 anybody who goes down there can see that
21 there is no fair balance south of 5th
22 Street.

23 MAYOR DERMER: And the second?

24 MR. HABER: And the second issue is
25 not only is there not a fair balance, but

1 that they believe for some reason that
2 because we are going to pass this
3 legislation, we are all out to get rid of
4 nightclubs, and we want to turn this
5 into -- I think last commission meeting
6 it was Kendall. This one it's Hialeah, and
7 I'm sure by next one it will be Pembroke
8 Pines.

9 None of that is the case and none of
10 residents that live here want it to be that
11 way, all we want is the liberty to sleep at
12 night in our homes.

13 VICE MAYOR GARCIA: But David,
14 if you -- I'm sorry, Mr. Mayor.

15 MAYOR DERMER: Okay.

16 VICE MAYOR GARCIA: I thought I was
17 in dialogue with David.

18 MAYOR DERMER: No, go ahead, if you
19 guys want to finish up so we'll move up.

20 VICE MAYOR GARCIA: Basically, what
21 you have heard here is an overwhelming
22 support for the ordinance, plain and
23 simple. However -- however, if you listen
24 to the industry, you have -- you should
25 also have heard a concern as to what could

1 come up next.

2 I don't think the industry is that
3 worried about this ordinance per se.

4 MR. HABER: I don't think so either.

5 VICE MAYOR GARCIA: You know what,
6 with all due -- with all due respect to the
7 people that were here and are welcome for
8 being here, it's been very repetitious.
9 This thing could have been solved about two
10 hours ago. You know, I think that -- you
11 know, I think the outcome would have been
12 the same whether 2 people had spoken or 20
13 people had spoken.

14 MR. HABER: And I think -- and
15 I think, commissioner --

16 VICE MAYOR GARCIA: We have citizen
17 concerns, and we have industry concerns,
18 and we're going to balance them.

19 MR. HABER: And that's why I think
20 that the -- whether it's a -- whether it's
21 a retreat or a workshop, whatever you call
22 it, I think it will be helpful for the
23 other areas of Miami Beach to be able to
24 figure out how the hotels and the nightclub
25 industry are going to work within this

1 context, but in this specific area, we have
2 to --

3 MAYOR DERMER: I -- I -- we --
4 I think we understand this. Does every --
5 do other folks feel the need to speak?

6 Yes, of course. I -- I -- Juan
7 Rodriguez I called on. Juan, where is
8 Juan? Is Juan present? Let us go --

9 VICE MAYOR GARCIA: Mr. Mayor?

10 MAYOR DERMER: And then also J.B.
11 Slater. Yes.

12 VICE MAYOR GARCIA: Now, with all
13 due respect to, you know, I think that
14 it would be in the best interest of
15 everybody involved in the decision is taken
16 right now, you know, just out of
17 consideration of some of the other people
18 that have some other issues (Inaudible.)

19 MAYOR DERMER: I would like to
20 basically -- you know what, I take an
21 agreement to, I think, what you're saying
22 what commissioner gross is saying. I don't
23 mean an affront to anyone that came to
24 speak, but I think we've heard everything
25 that needs to be heard on this issue.

1 We've exhausted it pretty extensively and
2 we understand the positions. Those are the
3 people applauding that want to have their
4 issue heard after this, they want it to
5 wrap up. So we're gonna -- at this time
6 I need a motion to close the public
7 hearing.

8 CARTER: (Inaudible.)

9 MAYOR DERMER: You've been standing
10 with a lot of papers, what is it, Carter?
11 You're going to make a legal argument?

12 CARTER: No, there's many of us that
13 also represent clients that are affected,
14 and I --

15 MAYOR DERMER: Are you against the
16 ordinance, do you want to speak against
17 it or for it?

18 CARTER: I think the ordinance is
19 unnecessary, and I'd like to suggest to you
20 why.

21 MAYOR DERMER: In -- just give it to
22 me so fast so we can move on. I know
23 that -- and I'm talking to the wrong person
24 to do that.

25 CARTER: I understand.

1 MAYOR DERMER: Is it going to be --
2 is this going to be protracted?

3 CARTER: No.

4 MAYOR DERMER: I mean, am I -- okay.

5 CARTER: No, I think it will be two
6 minutes, probably.

7 MAYOR DERMER: Out of respect for
8 you, please, go ahead, and then we'll wrap
9 it up.

10 CARTER: The issue is --

11 MAYOR DERMER: And that will be it.

12 CARTER: The issue is the inability
13 to ask for permission to do something, not
14 that you are prohibiting it. I suggest you
15 three examples of why this ordinance --

16 MAYOR DERMER: By the way, who are
17 you representing here today?

18 CARTER: I -- well, I'll give you
19 three examples, Monty's upstairs.

20 MAYOR DERMER: Examples or people?

21 CARTER: Monty's downstairs.

22 MAYOR DERMER: Okay.

23 CARTER: Both of which are
24 neighborhood impact establishments by
25 definition.

1 MAYOR DERMER: Okay.

2 CARTER: None of which cause a
3 problem for anybody.

4 MAYOR DERMER: Okay. Who else do
5 you represent?

6 CARTER: Let me give you another
7 example.

8 MAYOR DERMER: I don't want -- I
9 just want to know who you're here
10 representing, I don't want (Inaudible.)

11 CARTER: I also represent Taverna
12 Opa and several other property owners in
13 the area.

14 MAYOR DERMER: Opa?

15 CARTER: Yes, I do.

16 MAYOR DERMER: Okay.

17 CARTER: And they have not been a
18 problem at all. They are activity -- their
19 noise activities are inside. I asked code
20 enforcement, there hasn't been any
21 complaints. Although, the sky was falling
22 when we learned that they were going to
23 open -- and they do have an outdoor area,
24 but the music is inside, and they have not
25 caused a problem that I am aware of and

1 that code enforcement is aware of.

2 MAYOR DERMER: Well, they wouldn't
3 be affected by this ordinance, right?

4 CARTER: Let me tell you -- well,
5 they will -- they're grandfathered in,
6 I agree.

7 MAYOR DERMER: (Inaudible.)

8 CARTER: As are the two -- as are
9 the two Monty's restaurants, although --

10 MAYOR DERMER: So what --

11 CARTER: Let me give you one further
12 example of what could never be approved
13 again if you approve this ordinance.
14 Joe's. You could never have Joe's in South
15 Beach again.

16 MAYOR DERMER: I don't think we have
17 Joe's again anywhere with the way Joe's is,
18 but anyway, go ahead.

19 MR. GOMEZ: I'm sorry, I'm sorry,
20 that's not true.

21 UNIDENTIFIED SPEAKER: (Inaudible)
22 neighborhood impact establishment?

23 MR. GOMEZ: Joe's is a neighborhood
24 impact establishment. If you look at the
25 code, the ordinance as before you, it would

1 allow it as a conditional use, it's not
2 prohibiting it. That would be that C right
3 there.

4 CARTER: I apologize.

5 MAYOR DERMER: Whoa, look at the big
6 grin on Jorge Gomez.

7 CARTER: I stand corrected. I stand
8 corrected. I stand corrected. I really
9 didn't understand that the ordinance would
10 permit that application.

11 MAYOR DERMER: Yeah, just to spell
12 it out for those in the audience, it would
13 only prohibit Joe's in a residential zoning
14 district, not in a commercial zoning
15 district.

16 CARTER: That's right, I understand
17 that.

18 MAYOR DERMER: Okay.

19 CARTER: I really didn't think that
20 it (Inaudible.)

21 MAYOR DERMER: Okay. Anything else,
22 Carter?

23 CARTER: I guess the point here, and
24 just an odd-off-the-wall suggestion.

25 MAYOR DERMER: Sure. You're in the

1 right place.

2 CARTER: Obviously -- obviously
3 they're been an awful lot of complaints
4 about noise, and most of it has emanated
5 from Opium, and the neighborhood is upset
6 about it, and the neighborhood has raised
7 hell about it. Why doesn't the
8 neighborhood think about getting together
9 and maybe raising some funds to sit down
10 with Opium and build a roof over it,
11 because that is a practical solution that
12 would work, and I'm not saying that there
13 should be a shared --

14 MAYOR DERMER: Next.

15 CARTER: -- Opium -- good-bye.

16 MAYOR DERMER: All right. Okay.
17 We're going to have a motion -- a motion to
18 close the public hearing.

19 MS. RUBINSON: Mayor Dermer,
20 I apologize, we've never met or I've not
21 been before this board. I've signed in
22 with Mr. Del Vecchio and everyone, I've
23 been here since two o'clock. I need two or
24 three minutes.

25 MAYOR DERMER: There's something

1 that hasn't been said you need to say.

2 MS. RUBINSON: Actually, I wrote it,
3 so I don't think it's been said, so I would
4 like to --

5 THE CLERK: Excuse me, your name.

6 MS. RUBINSON: My name is Jamie
7 Rubinson, I live at 40 Star Island, Miami
8 Beach, Florida, 3313 (Inaudible.)

9 MAYOR DERMER: Okay. Welcome
10 Jeanie.

11 MS. RUBINSON: Jamie.

12 MAYOR DERMER: Jamie, excuse me.

13 MS. RUBINSON: I have been involved,
14 I know some of you up there, I have real
15 estate commercial, residential, I'm an
16 attorney, I'm a real estate agent for over
17 12 years, and I am responsible for getting
18 over a thousand people to write the city
19 objecting to any future legislation
20 ordinances or laws governing what we have
21 now are existing uses.

22 Mr. Gross has had real estate
23 holdings on the beach for many years, and
24 our concern is not Opium, it's not Monty's,
25 it's the fact that people come here,

1 whether you buy a condominium, a commercial
2 property, you're a landlord, or you're a
3 tenant and you believe in a bundle of
4 rights. I spend my time in the city here
5 every single day. I run around and
6 I build, permit, do everything.

7 I have the experience that perhaps
8 you guys do not. There are a couple of
9 things that were brought up about
10 neighborhood impact establishments, we're
11 talking about occupancy laws.

12 What you start to do and what you
13 ultimately wind up with as your occupancy
14 load, this legislation and the planning
15 board ordinance that's happening on June
16 25th, everything is a direct relationship
17 to your occupancy load. The City of Miami
18 Beach determines that. Okay? You go, you
19 build, you invest, then you go to fire,
20 then they decide you have 299 people, you
21 have 301 people, you have 199 people.

22 We object, and people object to the
23 fact that we come here, and we invest, and
24 my family moved here in 1947, and you have
25 got to know what you have, and we are

1 concerned. It's not about the present uses
2 that we do have, we are concerned about the
3 fact that we are rushing. There's no
4 question that we need to all work together,
5 and there's no question that people need to
6 operate responsibly, but people need to
7 have the opportunity to come and rejuvenate
8 Miami Beach with their own dream like Mark
9 Soyka did with News Cafe, and the kosher
10 restaurant that became The Strand that
11 became The Living Room.

12 I mean, Mr. Dermer is looking at me
13 very funny. I don't know if people --

14 MAYOR DERMER: No, I'm sorry, it's
15 the hour of the day.

16 MS. RUBINSON: I don't know if you
17 understand what happens. I go --

18 MAYOR DERMER: What about this
19 ordinance, Jamie, do you have objection to?

20 MS. RUBINSON: What I object to,
21 actually, there was an attorney here
22 speaking on behalf of the Savoy and who
23 suggested the 50-room limit as opposed to
24 the 250-room limit. Yeah, I actually agree
25 with him 100 percent. The point is 250 is

1 arbitrary and pointless. It effectively
2 eliminates everything because there is no
3 place south of 5th or south of 6th that
4 will ever have more than 250 rooms. It's
5 not possible with current FAR's and all
6 that other stuff. So 250 is completely
7 useless.

8 COMMISSIONER GROSS: Jamie,
9 it didn't eliminate everything, it allows
10 up to 299 people in a restaurant.

11 MS. RUBINSON: But who are you to
12 decide when I invest \$3 million how many
13 people I can have if fire says I can have
14 more.

15 COMMISSIONER GROSS: Before you
16 invest, you draw a set of plans, you go to
17 the fire department, and they will give you
18 an occupancy load.

19 MS. RUBINSON: I have sat -- I have
20 hired licensed architects on more than one
21 project, had them reviewed, had them
22 reviewed again, and those plans, there's a
23 standard -- there's a standard number for a
24 certain square foot of standing room and
25 seating room.

1 We all have computers now-a-days,
2 it's very standard, you highlight it,
3 it comes up, it spits it out. Believe
4 it or not, there's stuff that perhaps you
5 haven't done. There's convergence loads,
6 there's multiple stair (Inaudible.)

7 MAYOR DERMER: Jamie, what does that
8 have to do with the question?

9 MS. RUBINSON: No, the point of the
10 matter is I've had architects calculate
11 1,200 people and come out with 700 people,
12 and I've had architects calculate 300
13 people and come out with 212 people. So
14 you do not know, you start building --
15 you're occupancy load does not get approved
16 until it is time for your certificate of
17 occupancy. It does not get approved the
18 day you pull your permit.

19 MAYOR DERMER: Okay. We're
20 running -- you're running over. I gave you
21 the time that you requested.

22 MS. RUBINSON: Okay. That's fine.

23 MAYOR DERMER: I appreciate your
24 comments very much.

25 MS. RUBINSON: These are for you.

1 MAYOR DERMER: Okay. Thank you very
2 much for coming in. Motion to close the
3 public hearing? Motion, motion, motion?

4 COMMISSIONER GROSS: I'll move it,
5 yeah.

6 MAYOR DERMER: Okay. Motion --

7 COMMISSIONER CRUZ: What are you
8 moving?

9 COMMISSIONER GROSS: Public hearing,
10 we're closing the public hearing, that's
11 very controversial.

12 COMMISSIONER CRUZ: Okay.

13 COMMISSIONER GROSS: I'll move the
14 ordinance as adopted by the planning board.

15 MAYOR DERMER: Motion by Gross,
16 second by Bower. Any further discussion?

17 COMMISSIONER STEINBERG: I have some
18 comments.

19 MAYOR DERMER: Go ahead.

20 COMMISSIONER STEINBERG: First,
21 I want to read a portion of a letter from
22 the chamber of commerce that was circulated
23 to us today since no one from the chamber
24 read it. This is from the executive
25 committee. It says, "Recognizing the

1 sensitivity and urgency of both the
2 residential and business communities all
3 propose legislation to address noise
4 complaints should be taken in total and not
5 individually. The response to the issue
6 should be comprehensive prior to adopting
7 any legislation. An overall examination of
8 the matter should be obtained."

9 You know, we earlier today decided
10 we're going to have a workshop to deal with
11 these type of issues, to deal with the
12 noise issue. I don't understand what the
13 rush is to get this done. There's nothing
14 that I know of that is slated right now
15 that is going to be stopped by this.
16 It doesn't affect anyone that's already in
17 business. It's looking prospectively.

18 What we're doing here is piecemeal,
19 and, frankly, you know, as has been raised
20 by the nightlife industry, they're
21 concerned because they feel, you know, back
22 to the my mayor's comment at a prior
23 meeting on the salami, that this is a
24 salami issue, and we're cutting the salami
25 down and cutting the salami down.

1 MAYOR DERMER: That comment didn't
2 go over too well, actually, so.

3 COMMISSIONER STEINBERG: And then
4 eventually the nightlife industry --

5 UNIDENTIFIED SPEAKER: (Inaudible.)

6 MAYOR DERMER: Anyway, we'll keep on
7 moving. Okay.

8 COMMISSIONER STEINBERG: -- that the
9 nightlife industry is going to be hurt.
10 There clearly is a perception out there
11 that the City of Miami Beach is turning
12 against nightlife, and we need to make sure
13 that that is not the message we are
14 sending, especially when the concerns that
15 are being raised by the community are not
16 going to be addressed by this ordinance.

17 This ordinance is not going to do
18 anything to address the concerns that
19 originally brought the people here.
20 They're still going to have the noise
21 whether or not this ordinance is there or
22 they won't have it depending on how
23 we enforce the laws. The real --

24 MAYOR DERMER: Let me ask, your
25 suggestion of a workshop or including this

1 in the coming workshop, if we pass it on
2 first reading and then this becomes an
3 issue for discussion on workshop, maybe
4 that would be the most economical thing to
5 do for our time and everyone's time. I'm
6 just throwing that out as a suggestion.

7 VICE MAYOR GARCIA: That -- if --
8 if -- I'll -- if you want me, I'm make the
9 motion. Do you want to -- do you want to
10 pass --

11 MAYOR DERMER: Well, we have a
12 motion on the floor now. We would have --

13 VICE MAYOR GARCIA: Well, you know,
14 we can have -- we have an amendment, too.

15 COMMISSIONER STEINBERG: I think
16 I have the floor.

17 VICE MAYOR GARCIA: Well, I'm sorry,
18 I --

19 MAYOR DERMER: If you would like to
20 make -- if anybody wants to amend, that's
21 fine.

22 VICE MAYOR GARCIA: I'm sorry,
23 excuse me, Commissioner Steinberg,
24 I thought you had finished over there.

25 COMMISSIONER STEINBERG: No, I'm not

1 done yet. I also want to highlight from a
2 memo from the manager from May 9th, the
3 clean sweep operations that started on
4 April 16th. Within the first three weeks
5 383 arrests were made. 30 -- 13 were for
6 excessive noise, 13 for urination or
7 defecation in public, 79 for open
8 containers, and 80 for prostitution.

9 The city has started addressing the
10 concerns. The residents came to this
11 commission very concerned about problems,
12 specific problem, noise, urination,
13 prostitution, the city is taking steps.
14 The city has gone after RDA funding
15 specifically for South Pointe to make sure
16 that we can have greater police presence to
17 help enforce these quality of life issues.

18 This is not a matter of new
19 legislation. The laws that are on the
20 books today, the county's noise ordinance,
21 will adequately deal with this, and the
22 city has stepped up the enforcement of that
23 ordinance to make sure that it does.

24 Another thing on the agenda today
25 that we added as an emergency item is

1 something -- there's a rumor going around
2 that all of a sudden someone's trying to
3 weaken the county's noise ordinance, and
4 I'm asking this commission to state its
5 position that we are in favor of the county
6 keeping the current noise ordinance to make
7 sure that the resident's interest and the
8 business interests can be balanced, because
9 the reality is if there's an outdoor
10 establishment and they can exist in a way
11 that doesn't disturb the residents, then
12 why not let them exist?

13 The reality is when they cross that
14 line, the law should come down on them, and
15 should be -- they should be dealt with
16 appropriately, but if they're able to
17 operate in a way that does not offend the
18 county ordinance, I don't see a problem,
19 personally. For that reason (Inaudible.)

20 MAYOR DERMER: Let me ask -- let us
21 just get some perspective. We'll call on
22 you commissioner. I just want to -- I just
23 want to review where we're at right now.
24 We have a motion and a second on the
25 ordinance.

1 COMMISSIONER GROSS: But as approved
2 by the planning board.

3 MAYOR DERMER: As approved by the
4 planning board. Commissioner Garcia.

5 COMMISSIONER GROSS: With the 250.

6 VICE MAYOR GARCIA: What I -- what
7 I would suggest, and maybe we can cut the
8 chatter, too, let's pass the -- the
9 ordinance assistance with the -- everything
10 except the min -- the 250 thing, the 250
11 room. That we can discuss at a later date.
12 We will have a first reading right now,
13 we will approve part of the ordinance as
14 far as the moratorium on new
15 establishments.

16 That would -- that would help the
17 residents where no new businesses would be
18 planned with that area, number one.
19 It wouldn't hurt existing businesses
20 because they're grandfathered in, number
21 two. Number three, the -- the issue as far
22 as the -- that Mr. Bercow exposed,
23 we could -- we could discuss it at the
24 workshop. Would that be a compromise that
25 would be --

1 MAYOR DERMER: Well, what we have is
2 already an -- Commissioner Gross's motion
3 is the original planning board.

4 COMMISSIONER GROSS: And what you're
5 suggesting is the same thing, because
6 if we're silent --

7 VICE MAYOR GARCIA: No --

8 COMMISSIONER GROSS: Let me finish.
9 If you -- if we're silent on the issue of
10 the conditional use for the neighborhood
11 impact establishment, what is current law
12 would govern, and the current law is 250
13 rooms or more.

14 VICE MAYOR GARCIA: With the
15 caveat -- okay. Excuse me, I'm not an
16 attorney, but what I'm trying to -- maybe
17 I didn't express myself well. With the
18 caveat that the -- the issue of the -- of
19 the -- lowering the -- the requirement of
20 rooms to be discussed at the workshop, with
21 view with that in the future might change.
22 Would that be a compromise?

23 COMMISSIONER BOWER: But that could
24 be a second motion that you could --

25 COMMISSIONER GROSS: That could be a

1 second motion.

2 VICE MAYOR GARCIA: Maria, Maria,
3 I'm trying to work out a compromise. Right
4 now. We have been at it for the best part
5 of four hours, and, you know --

6 COMMISSIONER BOWER: I'm just --

7 COMMISSIONER GROSS: Clearly, no
8 one -- I don't think anyone on the
9 commission is prepared to amend that
10 provision without it going to the planning
11 board, so --

12 COMMISSIONER CRUZ: I don't -- I
13 don't think anybody on the commission
14 really has any --

15 COMMISSIONER GROSS: And I'm not --

16 COMMISSIONER CRUZ: -- any problems
17 with the outdoor entertainment
18 establishment being prohibited regardless
19 of what any workshop has to say --

20 COMMISSIONER GROSS: Exactly.

21 COMMISSIONER CRUZ: -- or anything
22 else.

23 COMMISSIONER GROSS: All right.

24 COMMISSIONER CRUZ: I think
25 that's -- that's -- I think we've heard

1 loud and clear from everyone that that is
2 something that (Inaudible.)

3 COMMISSIONER GROSS: That we want to
4 do, and I think to address
5 commissioner's --

6 COMMISSIONER CRUZ: Are you ready to
7 call the question on your motion?

8 COMMISSIONER GROSS: Yeah, but
9 I just want to address Commissioner
10 Steinberg's comment, because right now
11 people are relegated to the conditional use
12 process, and I think what we're saying is
13 that the conditional use process is broken
14 in South Pointe, that people can get
15 permits from the planning board to do
16 certain things, and what we find is that
17 it morphs into something else, it becomes a
18 huge enforcement problem, and we have to
19 dedicate police resources to it, and it's
20 not fair to the business, because there's
21 an uncertainty about what they can and
22 can't do.

23 What we're doing today is sending a
24 clear message, and we're saying to them,
25 if you want to have outdoor entertainment,

1 do it in a district other than South
2 Pointe. There are other places that you
3 can do it, just don't do it in South
4 Pointe.

5 COMMISSIONER CRUZ: But if the
6 conditional use process isn't working, why
7 don't we address that and fix that as
8 opposed to putting a Band-Aid on one area
9 of the city and still having the problem
10 (Inaudible.)

11 COMMISSIONER GROSS: I think at the
12 workshop that is what we're going to do.
13 I think the objective would be to
14 establish --

15 COMMISSIONER CRUZ: All right. So
16 if that -- if that's the problem and we're
17 addressing another means to fix it, then
18 this is not necessary.

19 COMMISSIONER GROSS: No, it is
20 necessary, because everyone has agreed upon
21 it, and it solves a problem that we have
22 now, and what we're going to do in other
23 areas of the city we'll work out in the
24 workshop. I call the question.

25 MAYOR DERMER: All right. We have

1 a --

2 VICE MAYOR GARCIA: How about can
3 I -- can I --

4 MAYOR DERMER: (Inaudible)
5 amendment?

6 VICE MAYOR GARCIA: Well, maybe --
7 maybe not to bring this back for a second
8 reading until the time that the workshop
9 has been concluded.

10 MAYOR DERMER: I don't -- I don't --
11 you see, I -- I'll speak to that.
12 Basically, I --

13 VICE MAYOR GARCIA: No, I'm asking
14 you. Like I said, I'm not an attorney, I'm
15 just looking for (Inaudible.)

16 MAYOR DERMER: I'll speak to that
17 and state my opinion.

18 COMMISSIONER GROSS: Well,
19 Mr. Mayor, as a matter of procedure, let's
20 see if there's a second to the proposed
21 amendment.

22 MAYOR DERMER: Okay.

23 COMMISSIONER GROSS: To his
24 proposed.

25 MAYOR DERMER: Is there -- as an

1 amendment, that's correct, as an amendment,
2 is there a second to Commissioner Garcia?

3 All right. Hearing none, amendment
4 dies. Back to the original motion.

5 COMMISSIONER GROSS: Okay. I'll
6 call the question.

7 MAYOR DERMER: And there is a
8 second, calling the question. Very good.
9 Let us -- any other comment?

10 COMMISSIONER CRUZ: Yeah, I just
11 want to make one last comment, and that is
12 I want to again address what Commissioner
13 Gross has stated and so everyone
14 understands that what we're doing is not
15 going to effect any business that is
16 already in place.

17 Those businesses will continue to be
18 guided by their underlying zoning and
19 whatever regulations, whether it be Dade
20 County noise or anything else. What we're
21 doing here is prospectively putting in
22 legislation so that the issues that have
23 arisen, now we have it contained.

24 We know what we're dealing with, the
25 number of people, and hopefully we've seen

1 people emerge here from both sides of the
2 equation, from the residential side and
3 from the nightlife industry side, I think
4 it would behoove them not to get together.
5 You've now identified each other, get
6 together and come out to a working
7 situation between you so it doesn't have to
8 end up in front of us as an arbiter of
9 something that would only create more
10 legislation.

11 It's a reality, we have residents
12 there, we have nightlife industry in the
13 area. Try to get together and work
14 something and establishes -- establish your
15 own lines of communication so that the
16 problems can be resolved before they can
17 get to a crisis situation.

18 That is the way that community down
19 there is going to thrive. We don't want to
20 put anyone out of business, and we
21 hopefully want our residents to be able to
22 get some sleep. So if you work at it
23 together and you have -- and you yourselves
24 can identify who you can speak to, who is
25 someone that is rational, take that step,

1 and if you need help from any one of us to
2 intermediate and whatnot, we'd be more than
3 happy to, but it's a community issue. Try
4 to work it out.

5 I think we're onto something good.
6 This is a tremendous city we have going
7 here where all of a sudden, you know,
8 we have investment from the residential
9 side, we have the business side continuing
10 to want to come here, and we'll address the
11 side of hopefully making it easier for
12 everyone to live and work here and set the
13 ground rules and police and clean up and
14 make it easier to get your building permits
15 and the like, and we'll be here to do that.

16 But try to work out the differences
17 that exist. Get together, work them out,
18 and hopefully we can stay out of this sort
19 of arena for a while.

20 MAYOR DERMER: Let's call the
21 question, call the roll, please.

22 THE CLERK: Commissioner Cruz?

23 COMMISSIONER CRUZ: Yes.

24 THE CLERK: Commissioner Gross?

25 COMMISSIONER GROSS: Yes.

1 THE CLERK: Commissioner Bower?
2 COMMISSIONER BOWER: Yes.
3 THE CLERK: Commissioner Steinberg?
4 COMMISSIONER STEINBERG: No.
5 THE CLERK: Commissioner Smith?
6 COMMISSIONER SMITH: Yes.
7 THE CLERK: Vice Mayor Garcia?
8 VICE MAYOR GARCIA: Yes.
9 THE CLERK: Mayor Dermer?
10 MAYOR DERMER: Yes.
11 THE CLERK: 6 in favor, 1 against,
12 the motion carries. The second reading and
13 second public hearing is scheduled for June
14 11th.
15 MAYOR DERMER: Thank you very much
16 for coming down. If you folks can please
17 try an exit as quietly as possible.
18 We thank you very much for your patience.
19 Thank you. Thank you, folks.
20 (End of recording.)

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CERTIFICATE

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I, Matthew J. Haas, Court Reporter and
Transcriptionist, do hereby certify that I was
authorized to and did listen to and
stenographically transcribe the foregoing
recorded proceedings and that the transcript is a
true record to the best of my professional
ability.

Dated this 22nd day of January,
2017.



MATTHEW J. HAAS
Court reporter