

**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, <del>and</del> open air entertainment establishment, <del>neighborhood impact establishments</del>	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 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(1<sup>st</sup> 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:  <div style="border: 1px solid black; width: 80px; height: 40px; margin: 5px 0;"></div> Finance Dept.		Amount	Account	Approved
	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

T:\AGENDA\2003\jun1103\regular\1608 outdoor ent in PS 1st rdg sum.doc

AGENDA ITEM R5H  
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. Padden 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 <sup>ST</sup> STREET	DAILY BREAD	X			
124	2 <sup>ND</sup> 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 5<sup>th</sup> 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, <u>and</u> open air entertainment establishment, <del>neighborhood impact establishments</del>	N	N <del>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.</del>	<del>C*</del> <u>N</u>	N
<u>Neighborhood impact establishments</u>	<u>N</u>	<u>N</u> 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.	<u>C</u>	<u>N</u>

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

  
\_\_\_\_\_  
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(1<sup>st</sup> 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, 3<sup>rd</sup> 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, 1<sup>st</sup> 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, 1<sup>st</sup> 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

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

9 ALSO PRESENT:

10 MR. GOMEZ GONZALEZ, CITY MANAGER  
11 MURRAY DUBBIN, CITY ATTORNEY  
12 ROBERT E. PARCER, CITY CLERK  
13 MR. GOMEZ GOMEZ, PLANNING DEPARTMENT  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 Remmington. 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. Remington, 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 correct 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. BERCOW: 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. BERCOW: Okay.

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

12 MR. BERCOW: 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. BERCOW: 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.)  
21  
22  
23  
24  
25

CERTIFICATE

- - -

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

