

## DECLARATION OF FRANK DEL VECCHIO

My name is Frank DelVecchio. My wife Marian and I have owned and resided in our 301 Ocean Drive condominium unit on Miami Beach since September 6, 1996.

As a retired Massachusetts attorney familiar with land use planning and zoning, before purchasing I read the zoning regulations, including those prohibiting outdoor and open air entertainment, in sharp contrast to the zoning for the city's entertainment district (MXE), only two blocks north, at 5<sup>th</sup> Street and Ocean Drive. I was concerned that there were two pre-existing outdoor/open air establishments, but at least there could be no others.

One of the two open air entertainment establishments whose licensing preceded enactment of the zoning prohibition, was Amnesia, 136 Collins Avenue, considered "grandfathered-in". The noise escaping its atrium proved to be a constant source of intrusion into the lives of its immediate neighbors, as well as those blocks away, my wife and I included. Moreover, its patrons, often numbering several hundred and more, cause near total gridlock from cars, taxis, valets on the adjacent streets. Rowdy patrons trash the neighborhood.

The other major entertainment establishment in pre-existing status prior to our purchase in 1996 is Penrods at One Ocean Drive. Penrod Brothers also operates an adjacent outdoor facility: "Nikki Beach". About one-hundred parking spaces are available to Penrods in the adjacent lot leased from the city. Yet, on a party weekend, Penrod/Nikki Beach can accommodate in the neighborhood of 2700, as illustrated in a recently issued city special event permit, No. 2016193, for entertainment events commencing noon Wednesday, March 19, 2016 through 5:00 a.m. Monday, March 21, 2016. True, not all the estimated 2700 attendees are there at the same time. Yet the crowds are huge, partying on the sand, moving into and out of the facility and out onto the adjacent public beach. As the day wears on, liquor works its way, and the party gets rowdier and noisier. Patrons take every available public parking spot, and when there are no more, park in residential parking zones, disrupting the residents when they leave.

On Memorial Day weekend, 2001, the city was overwhelmed by parties drawn by social media to hip hop events in the Entertainment District. Police and city officials were caught unprepared for the thousands of cars and hundreds of thousands of revelers. Residents of South Beach were literally trapped in their homes, unable to fight the traffic jams, and fearful of being caught up in the crowds on the streets. I think it is fair to say that Memorial Day weekend 2001 introduced a much larger market to the party scene in the city's entertainment district, and entrepreneurs took advantage of it, adding to the noise, the dancing, the size of drinks and keeping the party going.

We began to experience an expansion of entertainment attractions to South of Fifth in the next couple of years. In late 2003/early 2004, the restaurant "Oasis", located at 840 1<sup>st</sup> Street, opposite a multi-unit residential complex development under the South Pointe Urban Redevelopment program, "The Courts" and "The Cosmopolitan", began featuring belly dancers and DJs commencing in the evening and continuing through the night. I am enclosing a copy of a Feb. 2, 2004 letter to the mayor and commissioners from a resident of The Courts, Mrs. Jeannette Martinez, describing the intolerable situation:

*"A typical night consists of long lines of people standing outside to get in. Valet parking attendants parking cars illegally on 1<sup>st</sup> and in the back alley where clear non-parking signs are shown. Very loud music coming from the inside and becoming louder when front door is opened. The sidewalk blocked due to tables and chairs placed outside for clients to sit. Nightclub flashing lights that can be seen through the curtains. People leaving the restaurant having had a few drinks talking, screaming, laughing leaving behind empty bottles and trash."*

*"We have had to take our children (1-4 years old) to their grandparents house during the weekend as they are not able to sleep with the noise."*

A bar, "LOVE/HATE LOUNGE", at 423 Washington Avenue, began featuring DJs, subjecting the nearby residential neighborhood to noise and unruly patrons. The president of a nearby residential cooperative, Tranquility House, 358 Euclid Avenue, Leo Ostreicher, made repeated complaints to Code Compliance, with disappointing results.

Taverna/Opa Restaurant, at 36 Ocean Drive, began featuring belly dancers and table top dancing.

The city's Planning Department, responding to complaints from residents of the south of Fifth neighborhood, undertook a planning analysis transmitting a recommended ordinance, enacted as Ordinance No. 2004-3445, May 5, 2004, extending the prohibition on entertainment establishments south of Fifth to those indoors as well as outdoors. That analysis catalogued 27 restaurant and bar licensees south of Fifth "that potentially could obtain the dance/entertainment component added to their license should this proposed ordinance not be approved."

This prohibition has prevented a de facto expansion of the nearby entertainment district to south of Fifth. South of Fifth is now regarded as perhaps the most desirable urban community in the city. It is safe for families and children. This is in sharp contrast to the increasing problems in the MXE Entertainment District, including crime, extensively reported in the press, and substantiated by data publicly presented by the Chief of Police at city commission meetings addressing how to cope with those problems.

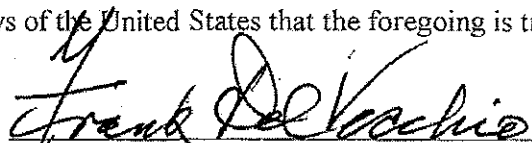
What a contrast it is when one walks from our condo at Third Street and Ocean Drive due north. As soon as we cross Fifth Street the scene instantly changes. On weekends cars begin queuing up for a slow drive on Ocean Drive, many with boom boxes blaring, along with open-sided mini-cabs from Entertainment District hotels with their sound equipment amped up. The cafes blast music out to the street and Lummus Park opposite them. Navigating the public sidewalk is difficult because of the tables and chairs and café equipment deposited there, and pedestrians forced into a narrow five-foot wide passageway. The opposite sidewalk is crowded, and pedestrians often congregate to view the entertainers opposite. The police testify that a "gauntlet" of tables, chairs, staff soliciting customers, harbors criminals. The mayor, deciding that the problems were so great, appointed a "Blue Ribbon Committee", which devoted two years in an attempt to figure out how to restore sanity and public safety. The principal remedy - a greatly beefed up police presence.

This is what residents of residential neighborhoods such as ours fear - once entertainment establishments are allowed by zoning, there are consequences not remedial by the ordinary

exercise of the city's police power. Our south of Fifth neighborhood is the closest to the MXE district, yet in spite of the closeness has been protected by zoning prohibitions on entertainment establishments dating back twenty years. The city adopted a redevelopment plan for our district, and companion zoning, which has achieved the objectives of the plan – a mixed use residential and hotel community, with ancillary commercial, safe and sound for its residents, businesses, and tourists. This is the reason that I, my condominium association, and the 321 Ocean Drive and Continuum Master Associations have filed a motion to intervene in the federal lawsuit brought by Bakehouse challenging this extremely important land use measure. I filed a declaration in that case which contains other information that is pertinent to this matter which may also be considered part of this legislative record. We ask the mayor and commissioners to enact these clarifying provisions of our zoning ordinance.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated May 8, 2017

  
Frank Del Vecchio