



# MEMORANDUM

RECEIVED  
MARCH 11 2008  
CITY MANAGER

DATE: March 5, 2008  
TO: Martin P. Black, City Manager  
FROM: Jack Stevenson, CFPS, Fire Marshal  
SUBJECT: 127 East Tampa Avenue

In January of 2007 I had a discussion with John Patek concerning the possibility of un-permitted work underway at the former location of Norma Jeans Bar. (See email dated 1/26/07) I made numerous site visits to this address over the course of the next several months but did not witness any construction activity.

On Wednesday November 7 2007 at 2:53 PM I received a telephone call from a gentleman who identified himself as Mike with Contractor's Plus (623-2081). He said he was doing some work at 127 East Tampa Avenue for the building owner Tammy Valuchi. He wanted to schedule a site visit to review existing conditions and to discuss what would be required for an increase in the occupant load. I asked him if there was an open permit for the work he was doing. He said that he was doing cosmetic work only so no permit was required. I then asked him what the intended use of the space would be. He replied that it was the owner's intention to reopen the business as a bar.

I met with Mike on Thursday November 8, 2007 at 1:30PM. Please note that prior to this meeting I had never entered this building in any capacity. When I arrived, Mike was just completing a meeting with Hans Behrens. At the conclusion of their meeting I introduced myself. At that time Mike stated that he was the husband of the building owner Tammy Valuchi. As we walked through the building Mike explained that he had not done any changes to the building but was interested in knowing if there was anything that the fire department would need in order for him to reopen as a bar. I discussed with him the need for the appropriate size, type, number and placement of fire extinguishers, that the exits had to be properly marked and kept clear at all times and that any other existing fire safety equipment needed to be affixed with a current inspection tag.

Mr. Valuchi then wanted to talk about what would be required to increase the allowable occupant capacity of the business beyond what had been allowed previously. I told him that if it was intention to change the use from the existing mercantile occupancy to a new assembly occupancy, then a code analysis would have to be done by a licensed professional and a permit for that change of use would have to be issued. He then thanked me for my time and said he would call if he had any further questions.

On Friday December 28, 2007 I received a call from Fire Inspector Randy Behling concerning the Tavern on the Island. I was on vacation and out of town so I did not get the message right away. I returned the call later that afternoon and spoke with Deputy Chief Steve Kona. Steve apologized for calling while I was away but Mike Valuchi had called demanding a fire inspection so that he could open for business in time for New Years Eve. I explained to Steve that since there was no open permit there were no required inspections. I went on to explain that if someone reopens a business without making any changes to what was there previously there is no requirement for any inspection other than the general periodic inspection that any similar business would receive. I told Steve that upon my return from vacation on January 2<sup>nd</sup> I would stop by when the bar was open and make sure every thing that I had previously discussed with the owner had indeed been done. I made numerous attempts to do the follow up site visit in early January but the premises was always locked.

On Monday December 31, 2007 I was copied on the attached email from Roger Clark to Hans Behrens concerning 127 East Tampa Avenue.

On Monday January 7, 2008 I received an email from John Patek concerning open code enforcement cases at this location. Please see my attached response.

On Friday January 11, 2008 at 11:15 AM I received a call from Mike Valuchi asking that I come to 127 East Tampa Avenue to explain to him what he needed to do in order to change the occupancy classification of the tavern from mercantile to assembly. Although I had previously told Mr. Valuchi what the necessary steps were, I agreed to the meeting in order to gain access to the building. I met Mr. Valuchi on site on Monday January 14, 2008 at 1:00 PM. During my visit I did not note any outstanding firesafety violations. I told him that in order to change the current occupancy classification to assembly a permit would have to be issued. I informed him that some of the areas that his design professional would have to address would be building separation, exit number and capacity, exit hardware and all of the other requirements of the Florida Fire Prevention Code (FFPC). Mr. Valuchi then questioned me about the requirement for a fire sprinkler system. I explained to him that depending on the occupant load a fire sprinkler system may or may not be required by the current FFPC. I went on to tell him that a new FFPC was scheduled to take affect soon and due to the fatal fire at the Station Nightclub Fire in Warwick RI., the sprinkler requirements for nightclubs would probably become more stringent.

On Friday February 22, 2008 at 1:08 PM I received a call from Mike Valuchi. He questioned the Building Department's fire sprinkler requirements for a change of use to a nightclub. I told him that the Building Department enforces the Florida Building Code not the fire code. I said that since the building code had received a recent update the sprinkler requirements may have changed and be ahead of the fire code. He wanted to exploit what he perceived as the apparent discrepancy in the codes. I told him regardless of what he thought, he must satisfy the building code requirements or he would never receive a permit. I followed up the next day with Karen Butterworth in response to the comments made by Mr. Valuchi. Karen was able to show me where the building code made a distinction for nightclubs in terms of the fire sprinkler system requirements. I have had no further contact with Mr. Valuchi or the Tavern on the Island.

The current 2004 Florida Fire Prevention Code addresses existing buildings this way.

## **Chapter 4.5 General Requirements**

### **Section 4.5.2 Conditions for Occupancy**

No new construction or existing building shall be occupied in whole or in part in violation of the provisions of this *Code* unless the following conditions exist:

- (1) A plan of correction has been approved.
- (2) The occupancy classification remains the same.
- (3) No serious life safety hazard exists as judged by the AHJ.

The Florida Statutes further restrict the AHJ's authority over existing buildings.

#### **633.025 Minimum firesafety standards.**

6) With regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the minimum firesafety code and that physical limitations may require disproportionate effort or expense with little increase in lifesafety. Prior to applying the minimum firesafety code to an existing building, the local fire official shall determine that a threat to lifesafety or property exists. If a threat to lifesafety or property exists, the fire official shall apply the applicable firesafety code for existing buildings to the extent practical to assure a reasonable degree of lifesafety and safety of property or the fire official shall fashion a reasonable alternative which affords an equivalent degree of lifesafety and safety of property. The decision of the local fire official may be appealed to the local administrative board described in s. 553.73.

In regards to your question concerning the licensing of the current business I can offer the following comments. I have always had an understanding with Roger Clark and Ed Hofert before him, that if during the course of the occupational license process they thought that there was a business change that required further investigation I would be glad to provide that service. This was based upon the ability provided by the fire code to inspect existing buildings and to request the service of the technical inspectors when necessary. This was an informal arrangement but it seemed to be sufficient to meet the city's needs.

On January 10, 2007 at 2:30 PM a meeting was called by Roger Clark. The subject was Occupational licensing and required inspections. The email notification for this meeting is attached. The focus of the meeting was to provide a system to require technical and fire safety inspections prior to the issuance of an occupational license by the City of Venice. During that meeting I relayed to the group that what was being proposed was a possible violation of Florida Statute. The subject of tying the issuance of an occupational license to a satisfactory fire safety inspection had been the subject of a vigorous exchange among the members of the Florida Fire Marshals and Inspectors Association (FFMIA) prior to the meeting called by Roger. Part of that FFMIA discussion dated 10/25/06 is provided. It became clear from my reading of the referenced Florida Statutes and the related Attorney General Opinions that an occupational license is a tax. Any action to make the collection of the occupational tax conditional on any other stipulation was not allowed. In addition the transferring of the tax collection duties from the taxing authority (City Clerk?) to the Planning and Zoning Department was probably prohibited. I suggested that the only way the city could require technical and fire safety inspections to properties that fell out side of the current building and fire code requirements, IE new construction or change of occupancy, was to institute a separate change of tenant permit through the building department and enforced through code enforcement. To my knowledge there has been no further action on this matter.