

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: City Attorney Ricardo J. Dopico

DATE: July 24, 2024 2:20 p.m. Second Reading Public Hearing

TITLE: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING SUBPART A, ENTITLED "GENERAL ORDINANCES" OF THE CODE OF MIAMI BEACH, CHAPTER 18, ENTITLED "BUSINESSES," ARTICLE XV, ENTITLED "STREET PERFORMERS AND ART VENDORS," BY AMENDING SECTION 18-906 THEREOF, ENTITLED "REGULATIONS, PROCEDURES, AND PROHIBITIONS," TO REGULATE SOUND LEVELS PRODUCED BY ANY PERSON IN CLOSE PROXIMITY TO OUTDOOR DINING SEATING, AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

ANALYSIS

The proposed Ordinance, which is sponsored by Vice-Mayor Laura Dominguez, is presented to the Mayor and City Commission for their consideration on First Reading.

The City has determined that outdoor dining in various areas within the City operated by restaurant businesses willing to operate their outdoor dining operations strictly in a manner that advances the interests of the City, as defined by the City, is desirable, and provides additional dining options for the enjoyment of public and private outdoor areas, thereby enhancing the quality of life for residents and the quality of the visitor experience for the City's tourists, and is a valid public purpose.

Outdoor dining in certain designated areas of the city provide a unique environment and ambiance, and an aesthetically pleasing experience for relaxation and food and/or beverage consumption that enhances the sophisticated and mature brand that the City has determined to promote.

It is imperative, however, that outdoor dining patrons receive a dining experience at the highest levels of ambiance, service, and quality, befitting the status of a recognized world class, international resort destination like Miami Beach.

The City strictly regulates the outdoor dining experience of patrons by requiring an Outdoor Dining Concession Agreement for outdoor dining establishments operating on the public right-of-way, maintaining land use rules and permitting regulations for outdoor dining operations on private property or on City-owned property leased to private parties.

One aspect of the outdoor dining experience that the City strictly regulates is sound and noise produced at or near outdoor dining establishments. For instance, Outdoor Dining Concessionaires operating on the public right-of-way are contractually prohibited from having any outdoor speakers and from providing any outdoor entertainment. Similarly, many establishments providing outdoor dining on private property or on City-owned property leased to private parties may not have outdoor speakers or provide live entertainment.

Loud, raucous, and unreasonably loud sound produced by street performers and others in the vicinity of outdoor dining establishments interferes with normal conversation by patrons at these

establishments, diminishes their dining experience, and interferes with the valid public purposes of the City's outdoor dining programs.

The use of speakers and other sound amplification devices by street performers and others on the public right-of-way has exponentially increased the sound produced and the negative secondary effects of street performers and other speakers on the dining experience of outdoor dining patrons.

The City has attempted to ameliorate the negative secondary effects of loud noise produced by street performers and others in close proximity to outdoor dining establishments without utilizing regulations aimed specifically at enhancing the outdoor dining experience and without prohibiting amplified sound in close proximity to outdoor dining operations, but these efforts have proven ineffective because street performers and others producing loud noise, particularly using speakers and other sound amplification devices, typically turn down their volume when approached by a code compliance officer, but turn the volume back up to unacceptable levels as soon as the code compliance officer leaves the area.

In order to maintain the highest standards benefitting outdoor dining patrons, there exists a need for additional regulations and standards for sound produced by street performers and others in close proximity to outdoor dining establishments, particularly sound produced using a speaker or other sound amplification device.

Sound produced by street performers and others on the public right-of-way that is louder than that appropriate in close proximity to patrons dining outdoors, including amplified sound, is allowed in many other areas of the City (though always subject to the City's general noise ordinance, land use ordinances, and applicable land use permits), so ample adequate alternative locations are available to those who may not produce loud sound that interferes with the normal conversation of outdoor dining patrons.

This proposed Ordinance regulates all persons producing sound in close proximity to outdoor dining patrons and/or that interferes with the normal conversation of outdoor dining patrons, regardless of the identity of the speaker, the content of the sound, and/or viewpoint of the person regulated. Though street performers utilizing speakers or other sound amplification devices are, in the City's experience, the primary source of interference with normal conversation by outdoor dining patrons, the regulations created in this Ordinance govern all speakers, regardless of their identity, content of their speech, or the viewpoint they may espouse.

FISCAL IMPACT STATEMENT

N/A

Does this Ordinance require a Business Impact Estimate? Yes
(FOR ORDINANCES ONLY)

The Business Impact Estimate (BIE) was published on 7/5/2024. See BIE at:
<https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notices/>

Applicable Area

Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-17?

Is this item related to a G.O. Bond Project?

No

No

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? No

If so, specify the name of lobbyist(s) and principal(s):

Department

City Attorney

Sponsor(s)

Commissioner Laura Dominguez

Co-sponsor(s)

Commissioner Alex Fernandez