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Acoustic Assessment Concerning Section 18-906 of the Code of Miami Beach “Street Performers and Art Vendors”

July 17, 2024

Regulating community noise can be a challenging task. This is due, in part, to the complex nature of sound propagation but also to the practical realities of enforcement. In order to be effective, a noise ordinance needs to have sufficient objectivity such that there is little or no question of what constitutes a violation. Due to complexities of the matter, the City of Miami Beach has requested that I express my opinion, as an acoustical consultant, on the proposed amendment to Section 18-906 of the Code of Miami Beach specifically concerning “Street Performers and Art Vendors.” The salient portion of the proposed amendment is as follows:

No person shall create any amplified or unamplified sound that interferes with normal conversation at any outdoor dining establishment located on private property, the public right-of-way or other public property. For purposes of this subsection, the use of a speaker, amplifier, megaphone or any other device intended to increase the sound produced by a person or by equipment in the possession or control of a person within 100 feet of the nearest perimeter edge of any outdoor dining establishment shall be presumed to interfere with normal conversation and is hereby prohibited.

In assessing the efficacy of the language, I watched 18 videos of code compliance body camera footage totaling nearly three hours. Within these videos, a street performer was generally approached by an officer and asked for their permit to determine their right to perform at the location. Then, a judgment was made by the officer as to whether the sound level was excessive. If so, the performer was asked to reduce their volume. In certain instances, the performers were cited or asked to vacate the location.

In addition to watching the body camera footage, I also had conversations with five stakeholders. Their names and their general commentary are presented below:

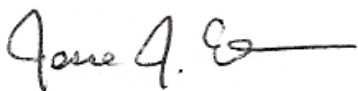
- Commissioner Laura Dominguez (sponsor of legislation): Commissioner Dominguez discussed first being informed by others of the issue then experiencing it herself when she had difficulty having a conversation with a dining partner while a street performer was active across Lincoln Road from their location. She related that a code compliance officer showed up and the performer turned down their volume only to turn it back up when the officer vacated.

- Thomas Curitore (Assistant Director of Code Compliance): Mr. Curitore discussed the challenges of enforcement given the tendency for performers to turn down their volume when approached by officers, only for them to turn the volume up again after the officers leave. He likened it to a “cat and mouse” game.
- Karen Rivo (G.O. Bond Oversight Committee Chair): Ms. Rivo indicated that she had experienced one or more situations when she could not converse at a sidewalk café on Lincoln Road due to the sound created by amplified performers.
- Robert Selsam (Miami Beach United Director): Mr. Selsam discussed experiences sitting at a café on Lincoln Road and not being able to hear a conversation due to one or two people playing amplified music on the other side of the mall. He also mentioned the proliferation of people leaving South Pointe Park or the beach with loudspeakers on wheels or on bikes playing music at a volume that interferes with conversations at outdoor dining venues.
- John Caprio (West Avenue Neighborhood Association): Mr. Caprio indicated that Lincoln Road is the main problem area for music but that there are also preachers on Ocean Drive and, in both cases, their amplification results in interference of conversations.

Insofar as the intent of the amendment is to preserve and promote pleasant outdoor dining experiences, which includes the ability to engage in normal conversation with fellow diners, it is my opinion that this amendment is appropriate and would prove beneficial in mitigating increasing sound levels. Given its objectivity and lack of a subjective component, it would be effective yet not overly restrictive. It also avoids the common occurrence of performers merely turning down the volume of their amplifiers when officers leave.

In addition to the aforementioned, I feel that a 100-foot demarcation is appropriate. Average sound levels for normal speech at a distance of 3' (e.g., across a dining table) are typically in the range of 55 to 58 dBA and those for raised speech at a distance of 3' are typically in the range of 62 to 65 dBA. If one were to assume that the sound level produced near (i.e., 3' from) a speaker, amplifier, megaphone, or similar device is 85 dBA (which, as a point of reference, is the OSHA action level for workplace noise exposure and is approximately the level of a heavy truck passing by at 50'), the corresponding sound level at a distance of 100' would be approximately 55 dBA, or approximately the same level as normal speech and slightly below that of raised speech. Thus, while production of such sound would potentially be audible at a table 100' from the source, it would be at or slightly below the level of conversation and would likely not be deemed to be interfering.

Sincerely,



Jesse J. Ehnert, INCE Bd. Cert.

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