

R5 X 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.

MIAMI BEACH

COMMISSION MEMORANDUM

TO:	Honorable Mayor and Members of the City Commission
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FROM: City Attorney Ricardo J. Dopico

DATE: June 26, 2024 First Reading

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? No
(FOR ORDINANCES ONLY)

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

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

ORDINANCE NO. _____

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.

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, this 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.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. That Sections 18-906 of the City Code shall be created as follows, and as hereinafter set forth below:

SUBPART A

GENERAL ORDINANCES

* * *

CHAPTER 18

BUSINESSES

* * *

ARTICLE XV

STREET PERFORMERS AND ART VENDORS

* * *

Sec. 18-906. - Regulations, procedures, and prohibitions.

Street performances (and other regulated parties) and artist vending shall be conducted in accordance with the following rules and requirements:

* * *

(3) All artist vendors and all street performers (and other regulated parties), whether or not in a permitted artist vending or street performer zone, shall comply with the following:

* * *

p. 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.

* * *

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. 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 Miami Beach City Code. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2024.

PASSED AND ADOPTED this ____ day of _____, 2024.

ATTEST:


Steven Meiner, Mayor

Rafael E. Granado, City Clerk


(Sponsored by Commissioner Laura Dominguez)

Underline denotes additions
Strikethrough denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney



Date

6/17/2025