Regulating Street Performers in Waikiki and Elsewhere

The Honolulu City Council has recently focused on the growing number of street performers along Kalakaua Avenue in the heart of Waikiki, and Councilmember Charles Djou, on behalf of the Waikiki Business Improvement District (WBID), has introduced a draft bill to regulate such activity. I am glad the Council is doing this because the sidewalks of Waikiki have become so crowded at times that it affects the safety of kama‘aina and tourists alike. However, I hope the City Council gets lots of good advice in the process because other cities have found similar attempts to regulate street activities – of every variety – to be full of challenges. Expensive legal battles often result.

Commercial, political, and artistic activities on public streets and sidewalks probably started when people first organized themselves into villages. Attempts to regulate these activities, no doubt, followed very quickly. (And the penalties imposed on violators, would no doubt shock us today.) As towns and cities have grown larger and life more complex, it is not surprising that conflicts arise with those who want to use these public spaces for any number of purposes. A quick Google search on the Internet for the term “regulating street performers” brings up 91,900 references in less than a second.

Scanning the information, it is quickly apparent that any sort of regulation in a free society brings up a battle between free-speech advocates and those who try to impose regulations, whatever the reason. I have seen places where regulation has apparently been successful. For example, the last time I visited Victoria, British Columbia, I saw a number of regulated and licensed buskers performing along the waterfront. Thanks to the ample space available on the sidewalks, it was quite pleasant, and it added to the ambience of the place.

Along a slightly different but definitely related line, Denver, Colorado, is making an attempt to restrict panhandling along its downtown streets and pedestrian mall. According to the Denver Post, ordinances being reviewed by the Denver City Council include a “sit and lie” ordinance, which would make it illegal for anyone to sit or lie on any sidewalk or public right of way in the downtown area between 7 a.m. and 9 p.m. It also would prohibit sitting or lying on stools, chairs, bedding, or any object placed on a public right of way in the area.

Honolulu has had its own experience in regulating the use of streets and sidewalks for something other than passage. Parades are regulated. Street parking is regulated. Sidewalk publication vending is regulated. Noise in public space is regulated. And don’t forget the time several decades ago when Hare Krishna devotees and others set up tables all along Kalakaua Avenue to sell “religious material” to tourists. This type of activity was finally closed down by properly tailored, specific legislation.

I hope the Honolulu City Council will carefully study and analyze the efforts of other municipalities to regulate street activities before finalizing the new ordinance for Waikiki. It would be much better to do it right the first time than to spend enormous amounts of time and money defending a defective ordinance from lawsuits after the fact.