

DRAFT – Chapter 142 MXE Regulations

Land Development Regulations (LDR's):

Sec. 142-541. - Main permitted uses.

The main permitted uses in the MXE mixed use entertainment district are apartments; apartment hotels, hotels, hostels, and suite hotels (pursuant to section 142-1105 of this chapter); commercial development as specified in section 142-546, and religious institutions with an occupancy of 199 persons or less.

Sec. 142-542. - Conditional uses.

The conditional uses in the MXE mixed use entertainment district are:

- (1) Major cultural dormitory facilities as specified in section 142-1332;
- (2) Public and private cultural institutions open to the public;
- (3) Religious institutions with an occupancy greater than 199 persons;
- (4) Banquet facilities; For purposes of this section, banquet facilities shall be defined as an establishment that provides catering and entertainment to private parties on the premises and are not otherwise accessory to another main use.

(5) New construction of structures 50,000 square feet and over (even when divided by a district boundary line), which review shall be the first step in the process before the review by any of the other land development boards;

- (6) Outdoor entertainment establishment;
- (7) Neighborhood impact establishment;
- (8) Open air entertainment establishment.

(9) Entertainment establishment

(10) Private clubs, accessory bars in hotel lobbies and restaurants, including accessory bars, which are open past 10:00 pm.

Sec. 142-543. - Accessory uses.

The accessory uses in the MXE mixed use entertainment district are as follows:

- (1) Those uses permitted in article IV, division 2 of this chapter.
- (2) Uses that serve alcoholic beverages are also subject to the regulations set forth in chapter 6.
- (3) Accessory outdoor bar counters, pursuant to the regulations set forth in chapter 6, provided that the accessory outdoor bar counter is not operated or utilized between midnight and 8:00 a.m.; however, for an accessory outdoor bar counter which is adjacent to a property with an apartment unit, the accessory outdoor bar counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.
- (4) Oceanfront hotels with at least 100 hotel units may operate and utilize an accessory outdoor bar counter, notwithstanding the restriction on the hours of operation, set forth in subsection (1) of this section, provided the accessory outdoor bar counter is located in the rear yard and set back 20 percent of the lot width (50 feet minimum) from any property line adjacent to a property with an apartment unit thereon.

Sec. 142-544. - Prohibited uses.

The prohibited uses in the MXE mixed use entertainment district are:

- (1) Accessory outdoor bar counters, except as provided in this chapter;
- (2) package stores; and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment. Additionally, entertainment uses shall be prohibited in package stores.

- (3) Medical and dental offices
- (4) Stand alone bars and stand alone drinking establishments, unless as an accessory use to a hotel and located within a hotel lobby.

Sec. 142-546. - Additional regulations restrictions for lots fronting on Ocean Drive, Ocean Terrace and Collins Avenue.

- (a) In the MXE mixed use entertainment district permitted uses in existing buildings at the time of adoption of this section with two stories or less fronting on Ocean Drive or Ocean Terrace and any building fronting on Collins Avenue from Sixth Street to 16th Street shall comply with the following:
 - (1) Sidewalk café permits shall only be permitted for restaurants and cafes, with full kitchen facilities.
 - (2) Alcoholic beverage establishments with sidewalk café permits shall only serve alcoholic beverages at sidewalk cafés during hours when food is served in the restaurant and shall not be permitted to have outdoor speakers anywhere within the public right of way.
 - (3) Commercial uses on rooftops shall be limited to restaurants only.
 - (4) Buildings existing as of October 1, 1989 with two stories or less fronting on Ocean Drive or Ocean Terrace may contain offices, retail, personal service, food service establishments, food service establishments serving alcohol, and residential uses or any combination thereof.
 - (5) The entire building shall be substantially renovated and comply with the South Florida Building Code, fire prevention safety code and the property maintenance standards. If the building is a historic structure, the plans shall substantially comply with the Secretary of the Interior Standards and Guidelines for Rehabilitating Historic Structures, U.S. Department of the Interior (revised 1983), as amended.
 - (6) ~~The buildings fronting on Collins Avenue from Sixth Street to 16th Street may contain offices, retail, food service establishments, personal service, food service establishments serving alcohol, alcoholic beverage establishments, and residential uses or any combination thereof. Medical and dental offices shall be prohibited uses in the MXE districts. Commercial uses located above the ground floor shall only have access from the interior of the building; no exterior access shall be permitted, unless a variance from this requirement is granted.~~
 - (3) ~~Required parking may be satisfied through participation in the parking impact fee program as set forth in chapter 130, article V, where applicable under the regulations contained therein.~~
 - (7) No existing building, constructed prior to December 31, 1966, shall be internally reconstructed to change the number of stories except that 20 percent of each floor plate may be removed to create an open area or atrium.
 - (8) For existing buildings with two stories or less fronting on Ocean Drive or Ocean Terrace, the addition of a story shall require that commercial uses comply with all provisions of section 142-904 for accessory uses. For purposes of example only, in buildings described in the foregoing sentence, the existence of commercial uses on the ground floor which exceed 25 percent of the floor area shall not, upon the addition of one story, be deemed grandfathered in, and the percentage of commercial uses on the ground floor, upon the addition of one story, must comply with the requirements of section 142-904, ~~except if a variance is granted.~~
 - (9) No variances shall be granted from the requirements of this section 142-546, ~~except as specified in subsection 142-546(a)(2).~~
- (b) Speaker regulations for lots fronting on Ocean Drive.

- (1) Commercial establishments fronting on Ocean Drive, except retail establishments, may only place or install outdoor speakers within 20 feet of the property boundary facing Ocean Drive or a side street, if such speakers are played at ambient levels.
 - (2) Retail establishments ~~fronting on Ocean Drive~~ shall be prohibited from placing or installing speakers outdoors. Any music played indoors at retail establishments ~~fronting on Ocean Drive~~ must be inaudible from the exterior of the premises at all times.
 - (3) No variances shall be granted from the requirements of this section 142-546(b).
- (c) Penalties and enforcement.
- (1) A violation of subsection (b) shall be subject to the following civil fines and penalties:
 - a. If the violation is the first violation, a person or business shall receive a written warning or a civil fine of \$250.00;
 - b. If the violation is the second violation within the preceding 12 months, a person or business shall receive a civil fine of \$1,000.00;
 - c. If the violation is the third violation within the preceding 12 months, a person or business shall receive a civil fine of \$2,000.00;
 - d. If the violation is the fourth violation within the preceding 12 months, a person or business shall receive a civil fine of \$3,000.00; and
 - e. If the violation is the fifth or subsequent violation within the preceding 12 months, a person or business shall receive a civil fine of \$5,000.00, and the city shall suspend the business tax receipt.
 - (2) Enforcement. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies from any action to assure compliance with this section and all applicable laws. If a violation of this section is observed, the enforcement officer will be authorized to issue a notice of violation. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten days after service of the notice of violation, and that the failure to appeal the violation within ten days of service shall constitute an admission of the violation and a waiver of the right to a hearing.
 - (3) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.
 - a. A violator who has been served with a notice of violation must elect to either:
 - i. Pay the civil fine in the manner indicated on the notice of violation; or
 - ii. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten days of the service of the notice of violation.
 - b. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. A request for administrative hearing must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.
 - c. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by the code compliance officer. The failure of the named violator to appeal the decision of the code compliance officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.
 - d. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by

the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the 61st day following the recording of any such lien that remains unpaid, the city may foreclose or otherwise execute upon the lien.

- e. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- f. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten days of the service of the notice of violation.
- g. The special master shall not have discretion to alter the penalties prescribed in subsection (c)(1).

Section 46-151 et seq. establishes noise exceptions for a specific area as described in those sections.

Sec. 142-904. - Additional mixed use entertainment district regulations.

- (a) *General provisions.* Accessory uses shall comply with the following mandatory criteria in addition to the regulations contained in sections 142-901 and 142-902:
 - (1) All structures shall conform to the South Florida Building Code, the city property maintenance standards and the fire prevention and safety code.
 - (2) The existing building and the proposed improvements shall be built in a manner that is substantially consistent with the design recommendations in neighborhood plans for the area if one exists, and the Secretary of the Interior Standards for Rehabilitation and Guidelines for Historic Structures, U.S. Department of the Interior, as may be amended from time to time.
 - (3) The minimum and average floor area requirements for the units as set forth in article II, division 13 of this chapter shall be met.
 - (4) If the building or plans do not indicate compliance with subsections (a)(1), (a)(2) and (a)(3) of this section, then accessory uses are not permitted.
- (b) *Permitted accessory uses.* The following are permitted accessory uses in the mixed use entertainment district.
 - (1) *Permitted accessory uses in hotels.*
 - a. Those accessory uses that are customarily associated with the operation of a hotel as determined by the planning and zoning director. The amount of retail space shall not exceed 75 square feet per hotel unit.
 - b. Hotels may have offices not associated with the operation of a hotel. The floor space associated with offices shall not exceed 35 square feet per hotel unit; medical or dental related offices are prohibited.
 - c. Restaurants, outdoor cafes, sidewalk cafes.
 - d. Solarium, sauna, exercise studio, health club or massage service which are located ~~in either the subterranean, ground, mezzanine or roof levels only~~ and are operated by an individual licensed by the state or other appropriate agencies.
 - e. Antiques, bookstore, art/craft galleries, artist studios.
 - f. Sale of alcoholic beverages as per article V, division 4 of this chapter.
 - g. Uses located on the porch, terrace or patio of a building are limited to table seating for eating and drinking establishments, which have their fixtures and cooking facilities located in the interior of the building, ~~and the sale of flowers when conducted from a movable stand that is placed inside the building at the close of business.~~

- h. The sale of cigars and cigarettes on the porch, terrace or patio of a building, or in permitted sidewalk café areas to seated patrons, by a vendor licensed on the premises with the consent of the restaurant and sidewalk café licensee, is permitted provided that such sale or transaction shall only occur on such premises, and not on other city rights-of-way. Soliciting passersby and obstructing the right-of-way are prohibited. Goods and merchandise transported from one location to another shall be covered and obscured from view. Vendors shall not use flashing lights, signs, markings, or other devices to call attention to themselves or the goods and merchandise, and shall not otherwise violate the provisions of section 74-1 of this Code. The following civil fines and penalties shall be imposed for violations of this subsection:
1. If the offense is the first offense, \$100.00 fine.
 2. If the offense is the second offense within six months of the first offense, \$250.00 fine.
 3. If the offense is the third offense within 12 months of the first offense, one seven-consecutive-day suspension.
 4. If the offense is the fourth offense within 12 months of the first offense, one 30-consecutive-day suspension.
 5. If the offense is the fifth offense within 12 months of the first offense, the vendor shall be considered a habitual offender, and the city manager shall issue an administrative complaint for suspension or revocation of an occupational license and certificate of use as provided in section 102-383.

For purposes of this section, suspension or revocation of a license shall apply to all licenses held by a principal or all individuals with a controlling financial interest in the business entity. The term "controlling financial interest" shall mean the ownership, directly or indirectly, of ten percent or more of the outstanding capital stock in any corporation or a direct or indirect interest of ten percent or more in a firm.

In the event of a revocation, as a condition of being permitted to resume operation under the occupational license, the city manager may impose conditions or restrictions as deemed appropriate to assure compliance with all city codes. A vendor who has been served with a notice of violation shall be subject to enforcement provisions as set forth in chapter 30[, code enforcement,] of the Code. If the special master finds that a violation has occurred, the applicable penalty set forth above shall be imposed.

- (2) *Permitted accessory uses in apartment buildings.* The following are permitted accessory uses in apartment buildings:
- a. Apartment buildings may have ~~commercial, office, or eating or drinking uses~~ retail, personal service or restaurants, outdoor cafes, and sidewalk cafés with sale of alcoholic beverages as per article V, division 4 of this chapter, with access to the street, on the first level ~~ground floor~~ and subterranean level or in the highest floor of a building; however, no more than 25 percent of the floor area of the subterranean or first level ~~ground floor~~ shall be used for commercial uses. Office space, when located on the ground floor, shall be located at least 50 feet from the front property line.
 - b. ~~Restaurants, outdoor cafes, sidewalk cafés with sale of alcoholic beverages as per article V, division 4 of this chapter.~~
 - c. ~~Solarium, sauna, exercise studio, health club or massage service by an individual licensed by the state or other appropriate agencies.~~

- (3) *Permitted accessory uses in apartment hotels.* Apartment hotels may have the same accessory use regulations as hotels if a minimum of 75 percent of the total number of units are hotel units.
- (c) *Additional requirements.* In addition to the regulations and accessory uses listed in subsections (a) and (b) of this section, structures located in the below areas shall comply with the following:
- (1) Permitted accessory uses for properties on Collins Avenue from Sixth to 15th Streets and on the west side of Collins Avenue from 15th to 16th Streets and Ocean Terrace include the above accessory uses but must comply with the following requirements:
- a. Offices that are medical or dental related are prohibited.
 - b. Notwithstanding the prohibited uses in Sec. 142-544, offices are only allowed in existing structures, otherwise, they are prohibited.
 - c. If a lobby is present or was originally constructed it shall be retained or reinstated. Such lobby may be used for a reception area with no partitions; however, offices are not permitted in the lobby.
 - d. Commercial uses, apartments, or hotel units either as a main permitted use or in any combination.
- ~~(2) Permitted accessory uses for properties that front on Ocean Terrace:~~
- ~~a. Commercial uses.~~
 - ~~b. Offices. If the office space is located on the ground floor shall be 50 feet from any front property line facing a street and be consistent with subsections (c)(1)a and (c)(1)b of this section.~~
 - ~~c. At least 50 percent of the total floor area shall be used as hotel or apartment, the floor area for hotel or apartment units shall meet the minimum area requirements established for the zoning district.~~
- (d) No variances shall be granted from the requirements of this section 142-904.