

DRAFT – Chapter 6 and 46 Regulations for MXE

City Code Chapter 6 and 46

Sec. 6-3. - Hours of sale/violations.

- (a) The hours of sale of alcoholic beverages, whether as a permitted main or accessory use, shall require a state license, and shall be according to the following schedule:

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- (1) *Retail stores for package sales only—Off-premises consumption.* Vendors may make sales of alcohol only for off-premises consumption between the hours of 8:00 a.m. and midnight.
- A. Notwithstanding subsection (a)(1), vendors located in the MXE mixed use entertainment district, that portion of the CD-2 commercial medium intensity district adjoining the MXE district along Washington Avenue between 5th Street and 16th Street, and that portion of the CD-2 district adjoining the MXE district along the east side of Collins Avenue (between 73rd and 75th Streets) may make sales of alcohol only for off-premises consumption between the hours of 10:00 a.m. and 5:00 pm ~~8:00 p.m.~~
- (2) *Retail stores, including grocery, convenience stores, and gasoline service/filling stations.* Retail stores, including grocery, convenience stores, and gasoline service/filling stations, which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only for off-premises consumption between the hours of 8:00 a.m. and midnight.
- A. Notwithstanding subsection (a)(2), retail stores, including grocery, convenience stores, and gasoline service/filling stations, that are located in the MXE mixed use entertainment district, that portion of the CD-2 commercial medium intensity district adjoining the MXE district along Washington Avenue, between 5th Street and 16th Street, and that portion of the CD-2 district adjoining the MXE district along the east side of Collins Avenue (between 73rd and 75th Streets), and which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only between the hours of 10:00 a.m. and 5:00 pm ~~8:00 p.m.~~
- (3) *Alcoholic beverage establishments.* All alcoholic beverage establishments with state licensure—On-premises consumption only, may make sales of alcohol between the hours of 8:00 a.m. and 5:00 a.m. Notwithstanding the foregoing, unless otherwise permitted pursuant to section 6-3(a)(3)E, below, all alcoholic beverage establishments with state licensure for on-premises consumption, that are located in the MXE mixed use entertainment district south of 16th Street, may only make sales of alcohol between the hours of 8:00 a.m. and 12:00 a.m.
- A. *Restaurants not operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, but not operating as dance halls or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m.

- B. *Restaurants also operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, and also operating as dance halls, or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m., and dancing and entertainment shall not be conducted between the hours of 5:00 a.m. and 8:00 a.m.
- C. *Other alcoholic beverage establishments.* Other alcoholic beverage establishments, not containing restaurants with full kitchen facilities, shall close at 5:00 a.m. and remain closed. No patron or other persons, other than those employed by the vendor may remain on the premises between the hours of 5:00 a.m. and 8:00 a.m.
- D. *Sidewalk cafes.* Notwithstanding the provisions of subsections (3)A. through C., alcoholic beverages shall not be offered for sale or consumption at sidewalk cafes, as defined in section 82-366 of this Code and as otherwise permitted by the city in accordance with chapter 82, article IV, division 5, subdivision II of this Code (as may be amended from time to time), between the hours of 12:00 a.m. 4:30 a.m. and 8:00 a.m., and shall not be consumed at sidewalk cafes between the hours of 12:00 a.m. 2:00 a.m. and 8:00 a.m. No variances may be granted from the provisions of this subsection 6-3(3)(d) as to the hours of sale or consumption of alcoholic beverages at sidewalk cafes.
- E. Alcoholic beverage establishments in the MXE district south of 16th Street. For any establishment located within the MXE zoning district south of 16th Street, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 12:00 a.m. and 8:00 a.m, unless the establishment obtains approval from the Alcoholic Beverage and Operation Board for extended hours for alcohol sales, in accordance with the following regulations:
- 1. Alcoholic Beverage and Operation Board.** The Alcoholic Beverage and Operation Board is hereby established to review applications for extended hours for alcohol sales for on-premises consumption later than 12:00 a.m. each night, at alcoholic beverage establishments within the boundaries of the MXE zoning district south of 16th Street. The Alcoholic Beverage and Operation Board shall have the authority to extend hours of alcohol sales for on-premises consumption until 5:00 a.m. each night, at a given location on private property. This review of requests for extended hours is required because such establishments are of a public and semi-public character. Additionally, such review is essential and desirable for the general convenience and welfare of the community, and because the nature of alcoholic beverage establishments, and their potential impacts on neighboring properties, require the exercise of regulatory judgment as to location, hours of operation, and operational plan.
- 2. Board Composition and meetings.**
- a) The Alcoholic Beverage and Operation Board shall consist of 5 members, appointed by the City Manager, and subject to confirmation by a majority vote of the City Commission. Each member shall be appointed for a two-year term.

b) The membership categories of the Alcoholic Beverage and Operation Board shall consist of the following

i. Two residents of the City who own property or reside either within the MXE district, or within 500 feet of the MXE district. Each resident shall also have demonstrated interest and experience in the rules and regulations governing the MXE district.

ii. Two individuals who have demonstrated expertise in entertainment, alcohol regulations, hospitality management, and/or the operation of food and beverage venues.

iii. An attorney (i) with demonstrated experience and expertise in land use and quasi-judicial matters, (ii) who has not represented a property owner or operator in the MXE district, and (iii) who has no financial interest in a property or business operation located in the MXE district.

c) The Alcoholic Beverage and Operation Board shall meet on a bi-monthly basis. At the discretion of the board chair, additional meetings may be scheduled.

3. Review guidelines. An extension of hours for the sale of alcoholic beverages for on-premises consumption later than 12:00 a.m. each night may be approved by the Alcoholic Beverage and Operation Board, provided that the following criteria are satisfied:

a) The extended hours will not result in an impact that will exceed the thresholds for the levels of service as set forth in the comprehensive plan.

b) The buildings, structures and uses associated with the request are consistent with the regulations of the City Code and the Land Development Regulations.

c) The public health, safety, morals, and general welfare will not be adversely affected.

d) Necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.

e) The concentration of similar types of uses will not create a negative impact on the surrounding neighborhood, and how the cumulative effect from the proposed use with adjacent and nearby uses will be addressed.

f) Whether the proximity of the proposed use to residential uses creates adverse impacts and how such impacts are mitigated.

4. Application requirements. An application for an extension of hours of sale of alcoholic beverages shall, at a minimum, include the following:

a) A proposed business operations plan, including hours of operation, a sanitation plan, number of employees, goals of the business, and other operational characteristics pertinent to the application. The operations plan shall also address the following:

i. The use of off-duty officers during the hours of operation.

ii. Proper advance notification of live performers, including, disc jockeys, including the date of the performance.

- iii. The vetting and training of security personnel, including techniques on de-escalation.
- iv. Adherence to an established code of conduct by promoters, management and all employees.
- v. Promoter registration with the City.
- b) An indoor and outdoor customer circulation plan shall be provided that facilitates ingress and egress to the site and structure and ensures that all activity will be limited to the confines of the property.
- c) A detailed security plan shall be provided for the establishment that addresses the safety of the business and its users and minimizes impacts on the neighborhood.
- d) A sound study, prepared by a licensed acoustical engineer, and a noise attenuation plan shall be provided. Such study and plan shall address how music and noise will be controlled and confined within the entire interior and exterior of the property, as well as minimize adverse impacts to adjacent, abutting and nearby properties.
- e) All of the aforementioned plans and studies shall be subject to an applicant-subsidized peer review.

5. Application procedures.

- a) Applications for an extension of hours for the sale of alcoholic beverages for on-premises consumption shall be submitted to the Planning Department, which shall prepare a report and recommendation for consideration by the Alcoholic Beverage and Operation Board.
- b) The application shall be noticed by publication in a newspaper of general circulation at least 15 days in advance of the meeting.
- c) Any application pursuant to this section shall, upon submission, be accompanied by the applicable fees in section 118-7. No application shall be considered complete until all required and requested information has been submitted and all applicable fees paid.
- d) The board shall consider an application on the next available meeting date after the minimum notice requirements have been satisfied. The board may approve an application, deny an application, or continue an application to a date certain at either the request of the applicant or at its own discretion.
- e) An extension of hours approved by the Alcoholic Beverage and Operation Board shall be effective for a period of one year from the date of approval. If the applicant operates in full accordance with the conditions of approval, and has received no violations of the City Code (including the Sidewalk Café Ordinance), the application can be renewed on a yearly basis by the Planning Director or designee.
- f) No occupational license, business tax receipt, certificate of use, certificate of occupancy, or certificate of completion for the approved extended hours shall be issued until all conditions of approval have been met.

- g) The failure of an establishment and/or property owner to comply with any and all conditions of approval shall constitute a violation of the City Code and shall be subject to all applicable procedures as set forth in the City Code, and as provided herein.
- h) Decisions of the Alcoholic Beverage and Operation Board shall be final, and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.

6. Revocation and modification of an approved extension of hours. The board may revoke or modify an approval for an extension of hours of sale of alcoholic beverages, pursuant to the following procedures:

- a) The Planning Director or designee shall notify the applicant by certified mail of the failure to comply with the conditions of the approval;
- b) If, after expiration of a 15-day cure period commencing on the date of the notice, the applicant fails to comply with the conditions, or the applicant has exhibited repeated or intermittent noncompliance with the conditions prior to the cure period and the Planning Director or designee is concerned about further repeated or intermittent noncompliance, the board shall be so advised at the next meeting and the board may consider setting a meeting for the purpose of examining the noncompliance issues;
- c) If the board elects to set the application for revocation or modification, the matter shall be placed on the board's next available agenda; and
- d) The board shall consider the issue of noncompliance and the possible revocation or modification of the approval, and, based on substantial competent evidence, the board may revoke the approval, modify the conditions thereof, or impose additional or supplemental conditions.
- e) In determining whether substantial competent evidence exists to support revocation, modification or the imposition of additional or supplemental conditions to the approval, intermittent noncompliance with the conditions, as well as the frequency, degree and adverse impact of such intermittent noncompliance, may be considered by the board.

7. Amendment of an approved extension of hours. When an applicant requests an amendment to an approved extension of hours, the Alcoholic Beverage and Operation Board shall consider such request. Additionally, the board may request any exhibits, studies, reports, analysis and relevant information.

Note: For purposes of this section, full kitchen facilities shall mean having commercial grade burners, ovens, and refrigeration units of sufficient size and quantity to accommodate the occupancy content of the establishment. Full kitchen facilities must contain grease trap interceptors, and meet all applicable city, county, and state codes.

- (4) *Off-premises package sales by alcoholic beverage establishments.* Off-premises package sales associated with alcoholic beverage establishments other than retail stores shall be permitted between the hours of 8:00 a.m. and midnight.

A. Notwithstanding subsection (a)(4), off-premises package sales associated with alcoholic beverage establishments, other than retail stores, that are located in the MXE mixed use entertainment district, that portion of the CD-2 commercial, medium intensity district adjoining the MXE district along Washington Avenue, between 5th Street and 16th Street, and that portion of the CD-2 district adjoining the MXE district along the east side of Collins Avenue (between 73rd and 75th Streets) shall be permitted only between the hours of 10:00 a.m. and 5:00 pm ~~8:00 p.m.~~

- (5) *Private clubs.* Consideration of a request for a private club conditional use permit, including the hours of operation, shall be pursuant to the conditional use procedures and review guidelines as listed in section 118-191, et seq. A private club, either as a permitted main or accessory use, shall only offer alcoholic beverages for sale or on-premises consumption if the private club, in accordance with subsection 6-2(a), secures a license for the distribution or sale of any alcoholic beverages from the division of alcoholic beverages and tobacco of the department of business and professional regulation of the state. Private clubs licensed as alcoholic beverage establishments, either as permitted main or accessory uses, shall, only offer alcoholic beverages for sale or on-premises consumption between the hours of 8:00 a.m. and 5:00 a.m., on any day of the week, provided that service is made only to members and guests of members pursuant to Florida Statutes. However, any private club permitted to remain open after 2:00 a.m. shall purchase an extra-hours license and must provide for security in its premises by hiring private security guards or off-duty police officers between the hours of 2:00 a.m. and 5:00 a.m. each day. These hours of operation shall not supersede lesser hours that may be prescribed herein.

Private clubs securing a license from the state division of alcoholic beverages and tobacco by complying with the requirements of F.S. § 561.20 for racquetball, tennis, or golf course facilities may admit members at any time for use of such facilities, but may not serve alcoholic beverages after 2:00 a.m. each day unless such private club is the holder of an extra-hours license and complies with the above requirements.

Sec. 46-157. - Exemptions.

The following uses and activities shall not constitute unnecessary and excessive noises prohibited in section 46-152:

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- (11) Live or amplified sound projecting east of the east property line from each property from 1st Street to 5th Street on the east side of Ocean Drive, ~~from 9th Street to 11th Street on the west side of Ocean Drive~~, from 15th Street to 73rd Street on the east side of Collins Avenue, from 73rd to 75th Streets on the west side of Ocean Terrace, and from 76th to 87th Streets on the east side of Collins Avenue. This exemption shall only apply to noise that is received in that area located east of the violating property and between the north and south projections of its property boundaries and where there is no part of any residential building or structure on any property to the east of the violating property unless the building or structure to the east is owned by the violator. Any noise received by a property that is outside of this area shall subject the violator to the enforcement provisions of this article.