

DIVISION 18. - PS PERFORMANCE STANDARD DISTRICT

Sec. 142-691. - Purpose.

(a) *Establishment of district and divisions.* The PS performance standard district is hereby established as shown on the map designated as the city zoning district map. The PS district consists of all land in the redevelopment area and consists of five districts including: a residential performance standard (R-PS) district, a commercial performance standard (C-PS) district, a residential limited mixed use performance standard (M-PS) district (each of which is further subdivided based upon the type and density or intensity of permitted uses), a GU government use district and MR marine recreation district.

(b) *Residential performance standards.*

(1) The residential-performance standards districts are designed to accommodate a broad spectrum of medium-low to high density residential development including townhome development and multiple-family development pursuant to performance standards which control the permissible type and density of residential development. Performance standards development will allow for modification of requirements affecting certain individual lots, greater flexibility, particularly for large-scale development, and incentives for provision of certain amenities and for conformance with specified objectives, thereby encouraging more flexible and innovative design and development, in accordance with the goals and objectives of the comprehensive plan and the redevelopment plan.

(2) In order to adequately and properly distinguish among the permissible types and densities of residential development, the redevelopment area is divided into the following residential districts:

R-PS1	Medium-Low Density
R-PS2	Medium Density
R-PS3	Medium-High Density
R-PS4	High Density

(c) *Commercial performance standards.*

EXHIBIT B

- (1) The commercial performance standards districts are designed to accommodate a range of business, commercial, office and hotel uses, as well as medium to high density residential development pursuant to performance standards which control the permissible type, density or intensity, and mix of development. Performance standards development will allow for modification of requirements affecting certain individual lots; greater flexibility, particularly for large-scale development; large commercial, medium to high density residential and mixed use developments in phases over time where the overall development at a single point in time or in a single instance by private owners would not be practical; providing incentives for provision of certain amenities and for conformance with specified objectives, thereby encouraging more flexible and innovative design and development in accordance with the goals and objectives of the comprehensive plan and the redevelopment plan.
- (2) In order to adequately and properly distinguish between types, densities and intensities of uses and mix of permitted commercial development in the redevelopment area, districts are divided as follows:

C-PS1	Limited mixed-use commercial
C-PS2	General mixed-use commercial
C-PS3	Intensive mixed-use commercial
C-PS4	Intensive mixed-use phased bayside commercial

(d) *Residential limited mixed use performance standards.*

- (1) The residential limited mixed use performance standards district is designed to accommodate the new construction of light commercial, office and public uses, as well as low density residential development pursuant to performance standards which control the permissible type, density or intensity, and mix of development. Performance standards development will allow for modification of requirements affecting certain individual sites; greater flexibility, particularly for large-scale development; light commercial, low density residential and mixed use developments in phases over time where the overall development at a single point in time or in a single instance by private

owners would not be practical; providing incentives for provision of certain amenities and for conformance with specified objectives, thereby encouraging more flexible and innovative design and development in accordance with the goals and objectives of the comprehensive plan and the redevelopment plan.

- (2) In order to adequately and properly distinguish between types, densities and intensities of uses and mix of permitted mixed development in the redevelopment area the RM-PS1 residential limited mixed use development is established.

(Ord. No. 89-2665, §§ 20-1, 20-2, eff. 10-1-89)

Sec. 142-692. - Uses permitted by right, uses permitted by conditional use permit and uses not permitted.

No building, structure or land shall be used or occupied except as a main permitted use, a conditional use, or an accessory use to a main permitted use, in accordance with the table and text of permitted uses. A use in any district denoted by the letter "P" is a use permitted by right in such district or subdistrict, provided that all requirements and performance standards applicable to such uses have been met. A use in any district denoted by the letter "C" is permissible as a conditional use in such district or subdistrict, provided that all requirements and performance standards applicable to such use have been met and provided that all requirements of chapter 118, article IV, have been met. A use in any district denoted by the letter "N," or specifically listed as a use not permitted in the text of section 142-693, is not permitted in such district or subdistrict. Uses permitted by right, as a conditional use, or as an accessory use shall be subject to all use regulations and performance standards contained herein and to such other regulations as may be applicable, including site plan review and design review. Uses not listed in the table of permitted uses are not permitted in the district or subdistrict. Notwithstanding any provision of this section, no use is permitted on a parcel, whether listed by right, as a conditional use or as an accessory use in such district, unless it can be located on such parcel in full compliance with all of the performance standards and other requirements of these land development regulations applicable to the specific use and parcel in question.

(Ord. No. 89-2665, § 20-3(A), eff. 10-1-89; Ord. No. 94-2908, eff. 2-26-94)

Sec. 142-693. - Permitted uses.

- (a) The following uses are permitted in the performance standard districts:

General Use Category	R-PS 1, 2	R-PS 3, 4	C-PS 1, 2, 3, 4	RM-PS1
Single-family; townhome; apartment; apartment/hotel	P	P	P	P Apartment/hotel not permitted
Hotel	N	P	P	N
Commercial	N	N	P	P 8% of floor area
Institutional	C	C	C	C 1.25% of floor area

<p>Accessory outdoor bar counters, 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.</p>	N	N	P* North of 5th Street only.	N
<p>Outdoor entertainment establishments and open air entertainment establishments</p>	N	N	N	N

<p>Neighborhood impact establishments</p>	<p>N</p>	<p>N However, in the R-PS4 district, this use is permitted, as an accessory use in oceanfront hotels with 250 or more hotel units, as a conditional use. Access to the establishment shall be only from the interior lobby of the hotel and not from the street.</p>	<p>C</p>	<p>N</p>
<p>Accessory</p>	<p>P*</p>	<p>P*</p>	<p>P*</p>	<p>P*</p>

P—Main permitted use C—Conditional use N—Not permitted

* — Accessory use only

Floor area in the RM-PS1 district refers to total floor area in project. Commercial uses in RM-PS1 limited to stores and restaurants.

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(b) For purposes of this section, a car wash, filling station and any use that sells gasoline, automobiles or automotive or related repair uses are considered as industrial uses and are not permitted in the redevelopment area.

(c)

For purposes of this section, pawnshops and dance halls and entertainment establishments are not permitted as a main permitted or accessory use south of Fifth Street; however, in the C-PS3 and C-PS4 districts dance halls and entertainment establishments shall be permitted as an accessory use within a hotel of 250 rooms or more with access to the dance hall or entertainment establishment only from the interior lobby and not from the street.

Additionally, for restaurants located in the C-PS2 district, on the south side of Fifth Street between Michigan Avenue and Alton Road, non-amplified piano or string instruments, played at a volume that does not interfere with normal conversation, may be permitted as a conditional use within the interior of the premises, in accordance with the requirements of chapter 118, article IV, and only during periods in which full meals are being served, and no later than 2:00 a.m.

- (d) In the R-PS1, 2, 3 and 4 districts, the number of seats for accessory restaurants or bars that serve alcohol shall be limited to a maximum of 1.25 seats per hotel or apartment unit for the entire site. The patron occupant load, as determined by the planning director or designee, for all accessory restaurants and bars that serve alcohol on the entire site shall not exceed 1.5 persons per hotel and/or apartment unit. For a hotel or apartment property of 20 units or more, but less than 32 units, the restaurant or bar may have a maximum of 40 seats in the aggregate on the site. The number of units shall be those that result after any renovation.
- (e) Commercial and noncommercial parking lots and garages shall be considered as a conditional use in the R-PS1, 2, 3 and 4 districts.
- (f) Video game arcades shall be considered as a conditional use in the C-PS1, C-PS2, C-PS3, and C-PS4 districts.
- (g) New construction of structures 50,000 square feet and over in the C-PS1, 2, 3, and 4 districts (even when divided by a district boundary line) shall be considered as a conditional use, which review shall be the first step in the process before the review by any of the other land development boards.
- (h) Religious institutions in R-PS1-4 and C-PS1-4 districts shall be permitted as a matter of right up to 199 occupancy, and over that occupancy shall be a conditional use.
- (i) Additional regulations for alcoholic beverage establishments located south of 5th Street.
 - (1) The following additional regulations shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located south of 5th Street:
 - (i) Operations shall cease no later than 2:00 a.m., except as otherwise provided herein.
 - (ii) Operations in outdoor or open air areas of an alcoholic beverage establishment shall

cease no later than 12:00 a.m., except as otherwise provided herein.

- (iii) Alcoholic beverage establishments with sidewalk cafe permits shall only serve alcoholic beverages at sidewalk cafes during hours when food is served, shall cease sidewalk cafe operations no later than 12:00 a.m. (except as otherwise provided herein), and shall not be permitted to have outdoor speakers.
 - (iv) Outdoor bar counters shall be prohibited.
 - (v) No special events permits shall be issued.
 - (vi) The provisions of this subsection (i)(1) shall not apply, to the extent the requirements of this subsection are more restrictive, to an alcoholic beverage establishment with a valid business tax receipt that is in application status or issued prior to June 28, 2016; or an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired prior to June 28, 2016.
 - A. Existing sidewalk cafes issued a sidewalk cafe permit as of June 28, 2016, for alcoholic beverage sales after 12:00 a.m., with food service, may continue to be renewed, but shall not serve alcoholic beverages later than 1:30 a.m., and alcoholic beverages may not be consumed at sidewalk cafes after 2:00 a.m.
 - B. Should an alcoholic beverage establishment with a sidewalk cafe permit under (A), above, be delinquent in a payment obligation to the city, and/or receive two final adjudications of violations of section 12-5 (special event permit), section 46-152 (noise ordinance), or chapter 82, article IV, division 5 (sidewalk cafe ordinance), that alcoholic beverage establishment shall only be allowed to serve alcoholic beverages at its sidewalk cafe until 12:00 a.m. for a 12-month period.
- (2) Notwithstanding the uses permitted in (a) and (d) above, in all districts except GU, government use district, no alcoholic beverage establishment, or restaurant, may be licensed or operated as a main permitted, conditional, or accessory use in any open area above the ground floor (any area that is not included in the FAR calculations) located south of 5th Street, Except that:
- (i) Outdoor restaurant seating above the ground floor, not exceeding 40 seats, associated with indoor venues (except as provided under (iii) below) may be permitted until 8:00 p.m. with no background music (amplified or nonamplified).
 - (ii) Outdoor music, whether amplified or nonamplified, and television sets shall be prohibited.
 - (iii)

Oceanfront hotels in the R-PS4 district. For purposes of this subsection (iii), eastward-facing oceanfront portions of an open-air seating area shall be limited to the open area 50 feet west of the eastern boundary of the above-ground structure.

- A. Oceanfront hotels in the R-PS4 district with at least 200 hotel units may have no more than 100 outdoor restaurant seats in open-air seating areas on one level that are located above the ground floor, of which at least half shall be located on eastward-facing oceanfront portions of an open-air seating area, at which patrons shall be seated no later than 12:00 a.m., and the seating area shall be closed to the public no later than 1:30 a.m. Patrons shall not be seated in the remainder of any open-air seating areas in a particular hotel later than 11:00 p.m., and such seating areas shall be closed to the public no later than 12:00 a.m. Seating on the main roof shall not be permitted under any circumstances.
- B. Oceanfront hotels in the R-PS4 district with at least 100 hotel units, but less than 200 hotel units, may have no more than 50 outdoor restaurant seats in eastward-facing oceanfront portions of open-air seating areas that are located on one level above the ground floor, at which patrons shall be seated no later than 12:00 a.m., and the seating area shall be closed to the public no later than 1:30 a.m. Seating on the main roof shall not be permitted under any circumstances.

(iv) Other than as permitted in subsection (i)(2)(iii), no commercial activity may be permitted on areas as described in this subsection (i)(2) between the hours of 8:00 p.m. and 10:00 a.m.

(v) Nothing herein shall prohibit residents of a multifamily (apartment or condominium) building, or hotel guests and their invitees to use these areas as described in this subsection (i)(2), which may include a pool or other recreational amenities, for their individual, personal use.

(3) Any increase to an alcoholic beverage establishment's approved hours of operation shall meet the requirements of this section.

(4) Variances from this subsection (i) shall not be permitted. Special events shall not be permitted.

(Ord. No. 89-2665, § 20-3(B), eff. 10-1-89; Ord. No. 90-2722, eff. 11-21-90; Ord. No. 91-2767, eff. 11-2-91; Ord. No. 94-2908, eff. 2-26-94; Ord. No. 94-2925, eff. 6-15-94; Ord. No. 96-3050, § 3, 7-17-96; Ord. No. 99-3179, § 5, 3-17-99; Ord. No. 99-3222, § 4, 12-15-99; Ord. No. 2003-3417, § 1, 6-11-03; Ord. No. 2004-3445, § 3, 5-5-04; Ord. No. 2007-3546, 1-17-07; Ord. No. 2008-3602, § 1, 3-12-08;

Ord. No. 2009-3631, § 1, 3-18-09; Ord. No. 2009-3649, § 1, 9-9-09; Ord. No. 2011-3715, § 1, 1-19-11; Ord. No. 2013-3791, § 7, 2-6-13; Ord. No. 2014-3869, § 1, 5-21-14; Ord. No. 2015-3948, § 1, 7-8-15; Ord. No. 2016-4054, § 1, 11-9-16)

Sec. 142-694. - Nonconforming uses, lots and structures.

Nonconforming uses, lots and structures shall be subject to the regulations contained in chapter 118, article IX.

(Ord. No. 89-2665, § 20-3(C), eff. 10-1-89; Ord. No. 96-3050, § 3, 7-17-96)

Sec. 142-695. - Performance standard regulations generally.

- (a) No building, structure or land shall be used or occupied except in conformance with the performance standards applicable to the use and subdistrict as set forth in the applicable table of performance standards. The purpose of the performance standards are:
- (1) To provide detailed regulations by means of minimum criteria which must be met by all uses in order to ensure development consistent with the goals and objectives of the comprehensive plan and the redevelopment plan;
 - (2) To protect the integrity of the comprehensive plan and the redevelopment plan and the relationships between uses and densities that are essential to the viability of these plans and the redevelopment area; and
 - (3) To promote and protect the public health, safety, and general welfare by requiring all development to be consistent with the land use, circulation and amenities components of the redevelopment element of the comprehensive plan and the capital improvements program for the area, as specified in the comprehensive plan.
- (b) In the R-PS and RM-PS districts, all floors of a building containing parking spaces shall incorporate the following:
- (1) Residential or commercial uses, as applicable, at the first level along every facade facing a street, sidewalk or waterway. For properties not having access to an alley, the required residential space shall accommodate entrance and exit drives.
 - (2) Residential uses above the first level along every facade facing a waterway.
 - (3) For properties less than 60 feet in width, the total amount of residential space at the first level along a street side shall be determined by the design review or historic preservation board, as applicable. All facades above the first level, facing a street or sidewalk, shall

include a substantial portion of residential uses; the total amount of residential or commercial space shall be determined by the design review or historic preservation board, as applicable, based upon their respective criteria.

(c) In the C-PS districts, all floors of a building containing parking spaces shall incorporate the following:

- (1) Residential or commercial uses, as applicable, at the first level along every facade facing a street, sidewalk or waterway. For properties not having access to an alley, the required residential space shall accommodate entrance and exit drives.
- (2) Residential or commercial uses above the first level along every facade facing a waterway.
- (3) For properties less than 60 feet in width, the total amount of commercial space at the first level along a street side shall be determined by the design review or historic preservation board, as applicable. All facades above the first level, facing a street or sidewalk, shall include a substantial portion of residential or commercial uses; the total amount of residential or commercial space shall be determined by the design review or historic preservation board, as applicable, based upon their respective criteria.

(Ord. No. 89-2665, § 20-4(A), eff. 10-1-89; Ord. No. 2006-3510, § 9, 3-8-06)

Sec. 142-696. - Residential performance standard area requirements.

The residential performance standard area requirements are as follows:

	Residential Subdistricts			
<i>Performance Standard</i>	<i>R-PS1</i>	<i>R-PS2</i>	<i>R-PS3</i>	<i>R-F</i>
Minimum lot area	5,750 square feet	5,750 square feet	5,750 square feet	5,750 square feet
Minimum lot width	50 feet	50 feet	50 feet	50 feet

Required open space ratio	0.60, See <u>section 142-704</u>	0.65, See <u>section 142-704</u>	0.70, See <u>section 142-704</u>	0.70, See <u>s 142-704</u>
Maximum building height*	45 feet Lots 50 feet wide or less—40 feet	45 feet Lots 50 feet wide or less—40 feet	50 feet Lots 50 feet wide or less—40 feet	Nonocean feet; Oceanfront feet; Lots 50 feet less—40 feet
Maximum number of stories	5 Lots 50 feet wide or less—4	5 Lots 50 feet wide or less—4	5 Lots 50 feet wide or less—4	Nonocean Oceanfront Lots 50 feet less—4 In the Ocean Historic District
Maximum floor area ratio	1.25	1.50	1.75	2.0

Minimum floor area per apartment unit (square feet); except as provided in <u>section 142-1183</u> for elderly and low and moderate income non-elderly housing	New construction—700 Rehabilitated buildings—400	New construction—650 Rehabilitated buildings—400	New construction—600 Rehabilitated buildings—400	New constructio Rehabilitat buildings—
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<p>Minimum average floor area per apartment unit (square feet); except as provided in <u>section 142-1183</u> for elderly and low and moderate income non-elderly housing</p>	<p>New construction—900 Rehabilitated buildings—550</p>	<p>New construction—900 Rehabilitated buildings—550</p>	<p>New construction—850 Rehabilitated buildings—550</p>	<p>New construction—850 Rehabilitated buildings—550</p>
<p>Minimum floor area per hotel unit (square feet)</p>	<p>N/A</p>	<p>N/A</p>	<p>15% = 300—335 square feet 85% = 335+ square feet</p>	<p>15% = 300 square feet 85% = 335 feet</p>
<p>Minimum parking</p>	<p>Pursuant to <u>chapter 130</u> and <u>section 142-705</u> requirement.</p>			
<p>Minimum off-street loading</p>	<p>Pursuant to <u>chapter 130</u>, article III.</p>			
<p>Signs</p>	<p>Pursuant to <u>chapter 138</u>.</p>			

Suites hotel	Pursuant to article IV, division 3 of this chapter.
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* Notwithstanding the foregoing provisions regarding maximum building height, in the Ocean Beach historic district, as defined in subsection 118-593(e)(2)f., the maximum building height for a lot located in the R-PS1, R-PS2, or R-PS3 zoning districts:

- (i) With a lot exceeding 50 feet, and
 - (ii) Upon which there exists a contributing structure which has not received a certificate of appropriateness for demolition (or any such approval has expired), shall be 40 feet.
1. Notwithstanding the above height restrictions, existing structures within a local historic district are subject to section 142-1161.
 2. In the R-PS4 zoning district, within the Ocean Beach historic district, when an existing contributing structure is nonconforming with respect to the height regulations in section 142-696, such structure may be repaired, renovated or rehabilitated regardless of the cost of such repair, renovation or rehabilitation, notwithstanding the provisions of chapter 118, article IX, "Nonconformances."
 3. Reserved.
 4. Notwithstanding the above height restrictions, in the R-PS4 zoning district, within the Ocean Beach historic district, for lots 100 feet or more in width, the maximum height shall be 35 feet for the first 60 feet of lot depth, 75 feet thereafter, subject to the line-of-sight analysis of section 142-697(d). However, for residential apartment buildings, on lots 100 feet or more in width, the historic preservation board, in accordance with certificate of appropriateness criteria, may allow an increase in the overall height not to exceed six stories, 60 feet for the first 60 feet of lot depth and 11 stories, 100 feet thereafter, and on lots 50 feet wide or less may allow an increase in overall height not to exceed 35 feet for the first 60 feet of lot depth and six stories, 60 feet thereafter, provided all of the following conditions are satisfied:
 - a. The property shall be an oceanfront lot;
 - b. The property shall not contain a contributing building;
 - c.

- The sixth level of the front portion of the new construction on lots 100 feet or more in width shall meet a line-of-sight, which for the purpose of this section, is defined as not being visible when viewed at eye-level (five feet six inches from grade) from the opposite side of the Ocean Drive right-of-way, and on lots 50 feet or less wide shall be subject to the line-of-sight analysis of section 142-697(d);
- d. The proposed building shall be sited and massed in a manner that promotes and protects view corridors. At a minimum, a substantial separation of the tower portion of any structure shall be required;
 - e. For lots greater than 50 feet in width, the front portion of the structure shall incorporate a separation in the center of the structure, which is open to sky, and is at least ten feet in width and 25 feet in depth; the exact location of such separation shall be subject to the historic preservation board, in accordance with certificate of appropriateness criteria. Alternatively, the massing and architectural design of the front portion of the structure shall acknowledge the historic pattern of residential structures along Ocean Drive;
 - [g. Reserved;]
 - h. The maximum residential density is 60 units per acre;
 - i. All required off-street parking for the building shall be provided on site; required parking may not be satisfied through parking impact fees;
 - j. The owner restricts the property to permit only rentals that are no less than six months and one day per calendar year, through language in its condominium or cooperative documents, and by proffering a restrictive covenant, running with the land, or other similar instrument enforceable against the owner(s), acceptable to and approved as to form by the city attorney, which shall be executed and recorded prior to the issuance of a building permit, to ensure that the building remains solely as a residential apartment building for a minimum of 30 years, and that no uses under section 142-902(2)e. are permitted on the premises during that time period;
 - k. Accepting that the value in the increased height, and the incremental traffic burden and effect on aesthetics in the district are offset by the conveyance of an easement for an extension of the beachwalk east of their structures, the owner provides an easement, acceptable to and approved as to form by the city attorney, for a public beachwalk on the easterly portion of its property, as more specifically provided in the plans on file with the city's public works department.

(Ord. No. 89-2665, § 20-4(B), eff. 10-1-89; Ord. No. 94-2908, eff. 2-26-94; Ord. No. 97-3097, § 3, 10-8-97; Ord. No. 98-3107, § 7, 1-21-98; Ord. No. 98-3150, § 2, 11-4-98; Ord. No. 99-3169, § 1, 2-3-99; Ord. No. 2002-3386, § 1, 11-13-02; Ord. No. 2005-3483, § 8, 5-18-05; Ord. No. 2006-3522, § 1, 7-12-06; Ord. No. 2011-3744, § 10, 10-19-11; Ord. No. 2012-3753, § 1, 2-8-12; Ord. No. 2014-3906, § 1, 11-19-14)

Sec. 142-697. - Setback requirements in the R-PS1, 2, 3, 4 districts.

(a) The setback requirements in the R-PS1, 2, 3, 4 districts are as follows:

	Front	Side, Interior	Side, Facing a Street	Rear
At-grade parking lot (below building)	5 feet	5 feet	5 feet	Nonoceanfront lots—5 feet Oceanfront lots—50 feet from bulkhead line
Subterranean	5 feet	5 feet	5 feet	Nonoceanfront lots—0 feet Oceanfront lots—50 feet from bulkhead line.

Pedestal	5 feet	7.5 feet, except when section (e) below applies. Lots 50 feet wide or less—5 feet, however, for residential apartment structures seeking approval under section 142-696.4 above, on lots greater than 50 feet in width, 15 feet for any portion of the pedestal above 35 feet in height.	5 feet	Nonoceanfront lots—10% of lot depth Oceanfront lots—20% of lot depth, 50 feet minimum from bulkhead line.
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<p>Tower</p>	<p>50 feet, except that in the R-PS4 within the Ocean Beach historic district, the minimum shall be 60 feet; however, for residential apartment structures seeking approval under section 142-696.4 above, the tower setback shall be determined by the historic preservation board.</p>	<p>The required pedestal setback plus 0.10 the height of the building; however, for residential apartment structures seeking approval under section 142-696.4 above, 15 feet.</p>	<p>The required pedestal setback plus 0.10 the height of the building.</p>	<p>Nonoceanfront lots—15% of lot depth Oceanfront lots—25% of lot depth, 75 feet minimum from bulkhead line; however, for residential apartment structures seeking approval under section 142-696.4 above, the tower setback shall be the same as the pedestal setback.</p>
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- (b) All required setbacks shall be considered as minimum requirements except for the pedestal front yard setback and pedestal side yard facing a street setback which shall be considered as both minimum and maximum requirements.
- (c) For lots greater than 100 feet in width the front setback shall be extended to include at least one open court with a minimum area of three square feet for every linear foot of lot frontage.

- (d) In the R-PS4 zoning district, within the Ocean Beach historic district, the tower portion of ground-floor additions to contributing buildings shall meet a line-of-sight, which for the purpose of this section is defined as not visible when viewed at eye-level (five feet six inches from grade) from the opposite side of the adjacent right-of-way.
- (e) In the R-PS4 zoning district within the Ocean Beach historic district, when an existing contributing structure has a minimum five-foot side yard setback, the setback of new construction in connection with the existing building may be allowed to follow the existing building line. The maintenance of the existing setback shall apply to the linear extension of the existing building.

(Ord. No. 89-2665, § 20-4(C), eff. 10-1-89; Ord. No. 90-2722, eff. 11-21-90; Ord. No. 94-2908, eff. 2-26-94; Ord. No. 2002-3386, § 2, 11-13-02; Ord. No. 2006-3522, § 2, 7-12-06; Ord. No. 2012-3753, § 1, 2-8-12)

Sec. 142-698. - Commercial performance standard area requirements.

- (a) Definitions. For purposes of this district, the following parcels are defined as set forth below:
 - (1) The "Block 51 Properties" shall mean Lots 5-9, 11, 12, 18-30 (and adjacent 10-foot strip of land), Block 51, Ocean Beach Addition No. 3, PB2, Pg81, Public Records of Miami-Dade County.
 - (2) The "Block 51 Swap Property" shall mean Lot 4, Block 51, Ocean Beach Addition No. 3, PB2, Pg81, Public Records of Miami-Dade County.
 - (3) The "Block 52 Properties" shall mean Lots 4-11, Block 52, Ocean Beach Addition No. 3, PB2, Pg81, Public Records of Miami-Dade County.
 - (4) The "Block 1 Properties" shall mean Lots 1-3, 5-13 (and alley adjacent thereto), 17, Block 1, Ocean Beach Florida, PB2, Pg38, Public Records of Miami-Dade County.
 - (5) The "Goodman Terrace and Hinson Parcels" shall mean those properties commonly known as the Goodman Terrace and Hinson Parcels, located south of South Pointe Drive and West of Washington Avenue, whose legal description is on file in the City Clerk's Office.
 - (6) The "Retail Parcel" shall mean the commercial building located south of South Pointe Drive, between Washington Avenue and the theoretical extension of Collins Avenue.

(b) The commercial performance standard area requirements are as follows:

	Commercial Subdistricts
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Performance Standard	C-PS1	C-PS2	C-PS3	C-PS4
Minimum lot area	6,000 square feet	6,000 square feet	6,000 square feet	6,000 square feet
Minimum lot width	50 feet	50 feet	50 feet	50 feet
Maximum building height	40 feet; 75 feet for the Block 51 Properties, the Block 51 Swap Property, Block 52 Properties, and Block 1 Properties	50 feet—East of Lenox Avenue 75 feet—West of Lenox Avenue	Non-oceanfront—80 feet Oceanfront—100 feet	150
Maximum number of stories	4; 8 for the Block 51 Properties, the Block 51 Swap Property, Block 52 Properties; Block 1 Properties	5—East of Lenox Avenue 7—West of Lenox Avenue	Non-oceanfront—8 Oceanfront—11	16
Maximum floor area ratio	1.0; 1.5 for the Block 51 Properties and Block 52 Properties, and 2.0 for the Block 1 Properties	2.0	2.5	2.5

<p>Residential and/or hotel development</p>	<p>Pursuant to all R-PS2 district regulations, except maximum building height for residential and mixed use buildings shall be 75 feet</p>	<p>Pursuant to all R-PS3 district regulations, except maximum building height for residential and mixed use buildings shall be 75 feet</p>	<p>Pursuant to all R-PS4 district regulations except maximum floor area ratio shall be 2.5; on the Goodman Terrace and Hinson Parcels, the FAR shall be that necessary to achieve 305,500 sq. ft. (estimated at 3.2 FAR), 30 stories and 300 ft. height maximum for the Goodman Terrace and Hinson Parcels, and open space ratio 0.60 measured at or above grade</p>	<p>Pursuant to R-PS4 district regulation except maximum floor area shall be 2. open space 0.60 measured at or above grade</p>
<p>Minimum apartment unit size (square feet)</p>	<p>New construction—650 Rehabilitated buildings—400</p>	<p>New construction—600 Rehabilitated buildings—400</p>	<p>New construction—550 Rehabilitated buildings—400</p>	<p>New construction— Rehabilitated buildings—</p>

Average apartment unit size (square feet)	New construction—900 Rehabilitated buildings—550	New construction—850 Rehabilitated buildings—550	New construction—800 Rehabilitated buildings—550	New construction— Rehabilitated buildings—
Minimum floor area per hotel unit (square feet)	15% = 300—335 square feet; 85% = 335 + square feet districts.			
Minimum parking requirements	Pursuant to <u>chapter 130</u> and <u>section 142-702</u> require			
Minimum off-street loading	Pursuant to <u>chapter 130</u> .			
Signs	Pursuant to <u>chapter 138</u> .			

(c) Notwithstanding the above height restrictions, existing structures within a local historic district are subject to section 142-1161.

(d) Notwithstanding the above floor area ratio limits, 75 spaces of required parking located on Block 51 for the Retail Parcel pursuant to a covenant under section 130-36, shall not be counted as permitted floor area. Further, the floor area on the Block 51 Properties and the Block 51 Swap Property may be distributed among such properties by covenant in lieu of unity of title; and the floor area on the Block 1 Properties may be distributed among such properties within the block by covenant in lieu of unity of title.

(Ord. No. 89-2665, § 20-4(D), eff. 10-1-89; Ord. No. 94-2908, eff. 2-26-94; Ord. No. 97-3097, § 3, 10-8-97; Ord. No. 98-3107, § 7, 1-21-98; Ord. No. 98-3150, § 2, 11-4-98; Ord. No. 2004-3452, § 3, 7-28-04; Ord. No. 2004-3452, § 3, 7-28-04; Ord. No. 2006-3539, § 2, 10-11-06)

Sec. 142-699. - Setback requirements in the C-PS1, 2, 3, 4 districts.

(a) The setback requirements in the C-PS1, 2, 3, 4 districts are as follows:

	Front	Side, Interior	Side, Facing a Street	Rear
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Subterranean	0 feet	0 feet	0 feet	0 feet
Pedestal and tower (non-oceanfront)	0 feet; for residential, 5 feet; 20 feet from adjacent streets above the first 40 feet in height for the Block 1 Properties, Block 51 Properties (except lots 11 and 12), Block 51 Swap Property and Block 52 Properties	7.5 feet when abutting a residential district, otherwise none. Residential uses shall follow the R-PS1, 2, 3, 4 setbacks (See <u>section 142-697</u>)	0 feet Residential uses shall follow the R-PS1, 2, 3, 4 setbacks (See <u>section 142-697</u>)	10 feet when abutting a residential district, otherwise—5 feet; 3.5 feet for the Block 1 Properties, Block 51 Properties (except lots 11 and 12), Block 51 Swap Property and Block 52 Properties; unless separated by a waterway—None

<p>Pedestal and tower (oceanfront)</p>	<p>Pedestal—15 feet Tower—20 feet plus one foot for every one foot increase in height above 50 feet, to a maximum of 50 feet, then shall remain constant</p>	<p>Commercial uses—10 feet Residential uses shall follow the R-PS1, 2, 3, 4 setbacks (See <u>section 142-697</u>)</p>	<p>Commercial uses—10 feet Residential uses shall follow the R-PS1, 2, 3, 4 setbacks (See <u>section 142-697</u>)</p>	<p>25% of lot depth, 75 feet minimum</p>
<p>Parking lots and garages</p>	<p>If located on the same lot as the main structure the above setbacks shall apply, if primary use the setbacks are listed in <u>section 142-1132(n)</u>.</p>			

(b) All required setbacks shall be considered as minimum requirements except for the pedestal front yard setback and the pedestal side yard facing a street setback, which shall be considered as both a minimum and maximum requirements, except for the Goodman Terrace and Hinson Parcels.

(c) For lots greater than 100 feet in width the front setback shall be extended to include at least one open court with a minimum area of three square feet for every linear foot of lot frontage, except for those properties located in the C-PS1 district described in section 142-698(a).

(Ord. No. 89-2665, § 20-4(E), eff. 10-1-89; Ord. No. 90-2722, eff. 11-21-90; Ord. No. 94-2908, eff. 2-26-94; Ord. No. 2004-3452, § 4, 7-28-04)

Sec. 142-700. - Mixed use buildings.

The calculation of setbacks and floor area ratio for mixed use buildings shall be as follows:

- (1) *Setbacks.* When more than 25 percent of the total area of a building in a C-PS district is used for residential or hotel units, any floor containing such units shall follow the R-PS1, 2, 3, 4 setback regulations.
- (2) *Floor area ratio.* When at least 75 percent of the linear frontage of the building at the ground floor level is used for commercial uses, the floor area ratio shall follow the range of the commercial district in which the building is located. In all other instances the floor area ratio range shall follow the floor area ratios as follows: In the C-PS1 district, the floor area ratio as set forth in the R-PS1 district; in the C-PS2 district, the floor area ratio as set forth in the R-PS2 district; in the C-PS3 district, the floor area ratio as set forth in the R-PS3 district; in the C-PS4 district, the floor area ratio as set forth in the R-PS4 district.
- (3) Notwithstanding the above, the properties defined in section 142-698(a), except the retail parcel, shall be governed by the development regulations in sections 142-698 and 142-699.

(Ord. No. 89-2665, § 20-4(F), eff. 10-1-89; Ord. No. 94-2908, eff. 2-26-94; Ord. No. 2004-3452, § 5, 7-28-04)

Sec. 142-701. - Residential limited mixed use performance standards.

Residential limited mixed use performance standards shall be as follows:

Mixed Subdistricts	
Performance Standard	RM-PS1
Minimum site area	120,000
Minimum site width	350 feet
Required open space ratio	0.60
Maximum building height	60 feet above ground or above enclosed parking

Maximum number of stories	6 stories above ground or above enclosed parking
Maximum floor area ratio	1.5
Minimum floor area per apartment unit (square feet)	600
Minimum average floor area per apartment unit (square feet)	1,000
Minimum floor area per hotel unit (square feet)	N/A
Minimum parking	Pursuant to <u>chapter 130</u> and subsection <u>142-706(c)</u> requirement herein
Minimum off-street loading	Pursuant to <u>chapter 130</u> , article IV
Signs	Pursuant to <u>chapter 138</u>
Suites hotel	N/A

(Ord. No. 89-2665, § 20-4(G), eff. 10-1-89; Ord. No. 92-2775, eff. 3-1-92; Ord. No. 94-2908, eff. 2-26-94; Ord. No. 97-3097, § 3, 10-8-97; Ord. No. 98-3107, § 7, 1-21-98)

Sec. 142-702. - Setback requirements in the RM-PS1 district.

The setback requirements in the RM-PS1 district shall be as follows:

- (1) Front, rear, side yard facing street: 2 feet when approved by the design review board; otherwise section 142-697 applies.
- (2) Side interior: See section 142-697.

(Ord. No. 89-2665, § 20-4(H), eff. 10-1-89)

Sec. 142-703. - Reserved.

Editor's note— Ord. No. 98-3107, § 7, adopted Jan. 21, 1998, repealed § 142-703, which pertained to performance standard bonuses and derived from Ord. No. 89-2665, § 20-4(l), effective Oct. 1, 1989.

Sec. 142-704. - Minimum required yards in relation to minimum open space ratio.

(a) *Open space.*

- (1) Open space ratio in the PS performance standard district refers to a percentage calculated as the area of open space, including required yards, at grade to the gross lot area of a parcel.
- (2) Open space is that part of a lot in the performance standard district, including courts and yards which:
 - a. Is open and unobstructed from its lowest level upward;
 - b. Is accessible to all residents on the lot without restrictions except as may be required for safety; and
 - c. Is not occupied by off-street parking, streets, drives, or other surfaces for vehicles. Open space is, in general, that part of a lot available for entry and use by the occupants of the building or buildings on the premises, but may include space located and treated to enhance the amenity of the development by providing landscaping, screening for the benefit of the occupants or neighboring areas, or a general appearance of openness. Open space may include water surfaces that comprise not more than ten percent of total open space, and may include landscaped roofs and decks pursuant to conditions contained in the district regulations.

(b) *Calculation.* In all cases, except as otherwise provided herein, an applicant shall comply with both minimum required yard and minimum open space requirements.

- (1) The open space ratio may include open space on roof top decks which are 50 feet or less above grade. At least 25 percent of the roof top deck shall constitute living landscape material.

(2)

Required yards and open space, whether at or above grade in the C-PS4 and RM-PS1 districts may also be utilized for drives and off-street parking spaces, except that if drives are ramped, they shall be at least 7½ feet from the front property line and not more than ten feet or one level above grade at their highest point; the total length of an elevated drive shall not exceed 40 percent of that portion of the lot facing the adjacent street.

- (3) Required yards adjacent to Biscayne Bay in the C-PS4 district may be utilized for open and unenclosed decks, platforms, planters, canopies, canvas type awnings, baywalks or removable furniture such as tables and chairs. Required side yards in the C-PS4 district may have public walkways that are partially covered.
- (4) Up to 50 percent of the open space required by these land development regulations may be fulfilled by payment of an in-lieu-of fee into the South Pointe Streetscape Fund. Notwithstanding the above, in no case shall the open space provided at grade be less than the total area resulting from the required setbacks. The in-lieu-of payment as described above shall be made at the rate as provided in appendix A per square foot of open space not provided. Such fee shall be paid in full at the time of application for the building permit. The fee shall be refunded if construction does not commence prior to the expiration of the building permit.
- (5) No variances shall be granted from the requirements of this section, except that variances may be sought as to subsection (b)(4) above, only for major cultural institutions within local historic districts, which only achieve no more than 80 percent of the total allowable FAR and can demonstrate that the open space cannot be provided on the roof top.

(Ord. No. 89-2665, §§ 3-2, 20-4(J), eff. 10-1-89; Ord. No. 94-2908, eff. 2-26-94; Ord. No. 2007-3549, 3-14-07)

Sec. 142-705. - Alternative parking requirement for multifamily residential development in R-PS districts pursuant to the parking impact fee.

Alternative parking requirements for multifamily residential development in R-PS districts shall be as required in the parking impact fee program as set forth in chapter 130, article V.

(Ord. No. 89-2665, § 20-4(K), eff. 10-1-89)

Sec. 142-706. - Supplemental parking regulations.

(a)

All districts. All non-oceanfront and non-bayfront residential development shall be encouraged to have parking with access to and from the alley only and such parking shall be rendered not visible from the street by the building's front facade. However, on corner buildings, the side view may be obscured by a wall.

(b) *C-PS3 and C-PS4 districts.* In C-PS3 and C-PS4 districts:

(1) One and one-quarter parking spaces per apartment unit, one parking space per hotel unit, and 2½ parking spaces per 1,000 square feet of commercial space except as otherwise specifically provided in subsection 142-706(b)(2). Required parking for hotel, hotel accessory uses and club uses may be satisfied through the provision of valet parking spaces. Twenty percent of required apartment unit parking spaces may be satisfied through the provision of valet parking spaces.

(2) Four parking spaces per 1,000 square feet of commercial space for all of the C-PS3 or C-PS4 properties of which any portion is located south of Second Street and west of Washington Avenue or west of the southern theoretical extension of Washington Avenue.

(c) *RM-PS1 district.* In the RM-PS1 district 1.65 parking spaces per apartment unit, and one parking space per 1,000 square feet of any nonresidential use. Up to 12 percent of the total parking spaces created on the premises may be for valet parking spaces.

(Ord. No. 89-2665, § 20-4(L), eff. 10-1-89; Ord. No. 94-2908, eff. 2-26-94; Ord. No. 96-3048, § 2, 7-17-96)

Sec. 142-707. - Development regulations for specified properties subject to a F.S. ch. 163, development agreement.

The following development regulations shall be applicable to all properties subject to a F.S. ch. 163, development agreement and to all properties of which any portion is located south of Second Street and west of Washington Avenue or west of the southern theoretical extension of Washington Avenue:

(1) The provisions of these land development regulations and the Code of the city shall control with respect to all terms, provisions, matters and issues affected by the F.S. ch. 163, development agreement, or any property affected thereby, except to the extent a term, provision, matter or issue is specifically addressed in the F.S. ch. 163, development agreement (including any design guidelines incorporated therein), in which case the provisions of the F.S. ch. 163, development agreement shall control.

(2)

Calculations, determinations and/or measurements of the floor area, floor area ratio, lot area, setbacks or any other land use and/or zoning criteria of these land development regulations shall include and consider any and all lands adjacent or contiguous to the property as specifically provided in the F.S. ch. 163, development agreement.

- (3) Calculations, determinations and/or measurements of the floor area, floor area ratio, lot area, setbacks or any other land use and/or zoning criteria of these land development regulations shall be based upon and not exceed that provided for in the F.S. ch. 163, development agreement and shall be based upon the total open space, floor area and/or other land use and/or zoning criteria, even if portions of such parcels are not under common ownership, provided that the total permissible open space, floor area and/or other land use and zoning criteria for such parcels (in the aggregate) are not exceeded, and such parcels, as a whole, shall be treated as a single building site for zoning and land use purposes, as described in the F.S. ch. 163, development agreement, despite such separate ownership.

(Ord. No. 89-2665, § 20-4(M), eff. 10-1-89; Ord. No. 96-3048, § 2, 7-17-96)

Secs. 142-708—142-730. - Reserved.