

MU, MIXED USE DISTRICT (CENTRAL BUSINESS DISTRICT)

Intent. The MU, Mixed Use District forms the metropolitan center for commercial, financial, professional, governmental, and cultural activities. Uses are permitted which require a central location convenient to the general citizenry and provide a supportive relationship to each other. Retail goods and services together with accommodations for tourists, transients, and permanent guests or tenants are permitted. Intermixing of business, professional, and multifamily for new residential uses permit people to live and work in or near the downtown area if they so desire.

Permitted uses.

Advertising companies

Art studios

Assisted living facilities

Automobile sales and services, new and used permitted west of Riverside Drive only, except on Canal Street between Riverside Drive and the FEC railroad tracks where the use is prohibited

Bakeries, nonmanufacturing

Bed and breakfast homes

Billiard halls

Charter boat business

Club, sports or health

College level and adult educational facilities

Communication facilities, such as radio, television, telephone, and telegraph buildings

Convenience market with or without gas pumps

Dancing establishments

Day care centers, adult

Delicatessens

Funeral homes

Government buildings and offices

Grocery stores

Laboratories

Newspaper offices and printing shops

Night clubs

Offices, general, professional and real estate

Package stores

Parking lots

Pawn shops

Personal services

Recreational buildings and complexes

Residential, attached dwelling unit

Residential, duplex

Residential, multi-family

Residential, single-family

Restaurants, type "A," "B," and "D"

Retail sales and services

Rooming houses

Schools with no more than 250 students

Service stations, types "A" and "B"

Taverns

Taxicab and bus stands and terminals

Theaters

Tour boat business

Transient lodging:

- "Transient lodging rooms, standard," as defined by this LDR, shall be a maximum of 500 square feet.
- "Transient lodging rooms, deluxe," as defined by this LDR, shall be a maximum of 750 square feet.
- The maximum room size does not include any balcony, porch or deck area connected to the unit.
- No more than 30 percent of the units may be deluxe.

Truck and trailer rentals (for properties in the district that front along U.S. Highway 1 and meet the conditions in [sub]section 801.18.

Permitted accessory uses.

All those uses customarily associated with the permitted principal uses.

Attached dwelling units that are structurally part of the principal commercial use.

Sidewalk cafes that comply with [sub]section 801.14 of the LDR.

Swimming pool, private, in conjunction with apartments, condominiums, hotels, motels, residential developments, bed and breakfast homes, and recreational buildings and complexes subject to the following:

(1)

It is located in the yard area between the rear wall of the residential structure and the rear lot line; or

(2)

It is located at the front or side of the building, but not in required yards, and a six-foot high solid opaque wall or fence totally encloses the pool area.

Conditional uses.

Farmers markets, subject to the following conditions:

(1)

The planning manager or designee determines that adequate parking is available.

(2)

There is adequate space on-site to accommodate all vendors without utilizing public rights-of-way unless city commission approval has been received to utilize the public rights-of-way.

(3)

Vendors shall not block pedestrian ways.

(4)

Products offered for sale shall be limited to the following:

a.

Fresh fruits and vegetables.

b.

Herbs and spices.

c.

Farmstead products including but not limited to cheese, meats, fish/seafood, poultry, eggs, baked goods, canned goods, honey, maple syrup and preserves.

d.

Bedding plants, hanging and potted plants, and cut flowers.

e.

Dried flowers or plants.

f.

A maximum of 50 percent of the total area used for the market shall be allowed for handicrafts.

g.

Prepared food and beverages.

h.

Flea market and yard sale items are prohibited.

(5)

The farmers market organization must obtain a business tax receipt from Volusia County and from the City of New Smyrna Beach.

(6)

Each vendor operating within the farmers market must obtain a business tax receipt from Volusia County and from the City of New Smyrna Beach.

(7)

Informational booths for 501(c)3 non-profit organizations shall be permitted.

Outdoor displays, subject to the following conditions:

(1)

Any outdoor display must maintain the Americans with Disabilities Act (ADA) continuous three feet of clear sidewalk width. This clear area of three feet in width must also be maintained to building entries. If this standard cannot be met, outdoor display for the business is prohibited.

(2)

No outdoor display of merchandise is permitted unless there is a permitted principal development on the parcel, located in full compliance with all standards and requirements of this chapter. Merchandise is limited to products sold in the primary business.

(3)

Vehicles for rent, scooters, low speed vehicles, bicycles, shall not be considered outdoor display if:

a.

All vehicles are stored or displayed solely on the private property associated with the business.

b.

Vehicles for rent are not stored or displayed in required parking spaces.

c.

Vehicles for rent do not impede Americans with Disabilities Act access along the public way or to the business.

(4)

All outdoor business displays shall be temporary and easily moved. The displays shall be placed outside only while the primary business is open.

(5)

All outdoor displays shall be located in a manner which does not cause an obstruction for sight distance problems for vehicles.

(6)

Hanging displays over the pedestrian right-of-way are prohibited.

(7)

Wind drive or motion devices, such as flags beyond those permitted by the sign ordinance or pinwheels that may impede or strike pedestrians are prohibited.

(8)

The outdoor business display shall be placed adjacent to and parallel to the subject business storefront. These displays shall not be placed adjacent to the street curb or perpendicular to the

subject business building. An outdoor business display shall not encroach upon the building frontage of an adjacent business.

(9)

The outdoor display area may be calculated at a rate of one-half (0.5) linear foot of outdoor display area per linear foot of storefront to a maximum of 50 linear feet of outdoor display area. The outdoor display area may be broken into clusters so long as the total length of all outdoor business display areas does not exceed permitted maximum as measured in linear feet. The total display area may be as much as five feet in length when 50 percent of the storefront would be less than five feet.

(10)

The outdoor displays may not exceed five feet in height.

(11)

The outdoor display area may not extend beyond the front of the building by more than three feet.

(12)

The outdoor business displays must be stable and constructed to withstand overturning by wind or contact. The display shall not be permanently affixed to any object, structure or the ground.

(13)

All outdoor business displays shall be continuously maintained in a state of order, security, safety and repair.

(14)

All outdoor business displays shall be neat, orderly and otherwise conducive to creating a top-quality shopping environment. No display shall contain obscene, indecent or immoral matter.

(15)

These business displays shall not contain any information which would routinely be placed on a business sign located on the building such as the name or type of business, hours of business operation, business logo, brand name information, etc.

(16)

If a business has a sandwich board sign in front of the business, the outdoor display area shall be reduced in size equal to the size of the sandwich board sign.

(17)

Nothing herein is intended to be an abandonment of any dedicated or prescriptive sidewalk or rights-of-way and the temporary displays on the public sidewalk or right-of-way may be removed at the discretion of the city manager or designee if determined that the display interferes with pedestrian traffic or otherwise determines that the display creates a safety hazard.

Approval of a conditional use. At the time the applicant applies for a business tax receipt with the city, the applicant shall also submit a conceptual plan to the planning department. The conceptual plan shall show the general location of the vendor stalls on the site. Based upon the criteria listed above, the planning manager or designee shall approve or deny the application for a conditional use.

Transfer or abandonment of a conditional use. Conditional uses are approved for a specific location and are assigned to the property. If the location of the use is changed, new conditional use approval must be obtained.

Violation of conditional use terms or conditions. It is a violation of this Code for any person to violate or to refuse or fail to comply with any term or condition of a conditional use. Violations may be prosecuted or enforced as provided by law for prosecution or enforcement of municipal ordinances.

Special exceptions.

Arcades, subject to the following conditions:

(1)

The city commission shall specify the hours of operation to ensure that the operation does not interfere with the operation of an adjacent business or businesses;

(2)

Smoking shall be prohibited within the establishment and an interior "No Smoking" sign shall be posted in a conspicuous area within the establishment;

(3)

Consumption of alcoholic beverages shall be prohibited within the establishment and an interior "No Consumption of Alcoholic Beverages" sign shall be posted in a conspicuous area within the establishment; and

(4)

The establishment shall be attended by an adult employee during the hours of operation.

Beach concession vehicles parked at a business, beachside only. See [sub]section 801.10.

Beach concession vehicle parking lots. See subsection 801.09.

Day care center, child, subject to the following additional conditions:

(1)

The child day care center shall be located on and be accessible by an arterial or collector roadway.

(2)

Play areas shall be fenced and landscaped. The landscaping shall have a vegetative hedge that will reach six feet in height within two years that is planted a minimum of three feet on center.

(3)

Play areas shall be located within all applicable setback dimensions.

(4)

The child day care center property shall have a vehicular drop off and pickup area with a minimum [of] 100 feet of drive lane outside of the public right-of-way, or sufficient parking area to provide enough space to fit the required parking and provided space for drop off and pick up.

Horse drawn carriage tour operations, subject to the following conditions:

(1)

Overnight boarding of horses used to pull the carriages is prohibited within the city limits;

(2)

Hours of operation shall be limited from 9:00 a.m. to 10:00 p.m. on weekdays and 9:00 a.m. to 11:00 p.m. on weekends;

(3)

All horses used to pull the carriages shall be bagged or diapered to prevent animal waste from littering the public rights-of-way;

(4)

All horses used to pull the carriages shall be fully attended at all times unless confined within a stable;

(5)

All carriages must be equipped with an operating rear flashing red light and reflective decals must be placed on all remaining sides of the horse and carriage when on the public rights-of-way;

(6)

The base of operation shall be cleaned of all animal waste at the close of each business day to the extent that any offensive odor will not create a recognizable nuisance to neighboring properties;

(7)

Any stable or animal storage area that is outside of a building must be screened by a six-foot high opaque fence; and

(8)

All tour routes and customer pick up and drop off locations shall require city commission approval based upon compatibility with neighborhoods and safety for other vehicles and the horse and carriage operation.

In order to obtain an occupational license, all horse drawn carriage tour operations must provide proof of the following:

(1)

A veterinarian certification for all horses to be used in the business operations. The certification shall be based on a treatment for internal parasites and an inspection of teeth, hoofs, shoes and any other indicators of general physical condition.

(2)

Proof of liability insurance with a minimum value of \$1,000,000.00.

Houses of worship

Tattoo parlor, subject to the following conditions:

(1)

Shall not operate on any parcel with frontage on the following streets:

a.

Flagler Avenue

b.

3rd Avenue

c.

Canal Street

d.

U.S. 1

(2)

Shall not operate on any parcel adjacent to or across the street from a single-family residential zoning district.

(3)

Shall not operate between the hours of 12:00 a.m. and 8:00 a.m.

(4)

Shall not be established within 300 feet of a church, daycare, private school, or public school.

(5)

Shall not be established within 1,000 feet of an existing tattoo parlor.

(6)

The business shall be subject to all requirements of F.S. ch. 877.

(7)

Tattooing areas shall not be visible from the public right-of-way.

(8)

Windows shall maintain a minimum transparent area of 65 percent.

Waterfront dining and entertainment establishments

Prohibited uses. The following uses shall be prohibited throughout the entire mixed use zoning district:

Outdoor storage (except operable vehicles, solid waste in an enclosed structure and propane gas tanks to the rear of a principal structure).

Uses not listed in permitted uses.

The following uses shall be prohibited in the Historic Westside Neighborhood:

Package stores

Nightclubs

Taverns

Dimensional requirements.

Minimum lot size.

Area: None

Depth: None

Width: 50 feet

Minimum yard size.

Front yard build-to lines:

Washington Street and intersecting streets one block north & south: 10—15 feet.

Canal Street and intersecting streets one block north and south: 0—5 feet.

Flagler Avenue: 2—10 feet. Streets intersecting with Flagler Avenue within one block north and south of Flagler Avenue excluding corner lots fronting on the street parallel to Flagler Avenue: 2—10 feet. Streets intersecting Flagler Avenue where lot also fronts on the street parallel to Flagler Avenue: 7—12 feet.

Other streets: 0—20 feet based on the average setback of buildings that were constructed before 1950 on both sides of the street in the same block. The build-to line may exceed 20 feet but may be

no greater than the average setbacks of existing principal pre-1950 buildings within the block on both sides of the street.

Side yard setback: Washington Street: Four feet if access is provided by a rear alley or from a side street; or a total of ten feet combined if a driveway is required to access rear parking.

Canal Street: None.

Flagler Avenue: Three feet if access is provided by a rear alley or from a side street; or a total of ten feet combined if a driveway is required to access rear parking.

Other streets: Five feet if access is provided by a rear alley or from a side street; or a total of ten feet combined if a driveway is required to access rear parking.

Rear yard setback: Ten feet

Encroachment into required yards.

There shall be no encroachment into required front yard areas except for the following accessory structures:

Eaves, sidewalk/patios/decks at adjacent public sidewalk elevation, planters, signs conforming to city regulations, benches/tables/chairs, other incidental uses may be located up to the front property line. Balconies, awnings, canopies and hanging signs may encroach upon the right-of-way provided there is a minimum vertical clearance of eight feet and a minimum horizontal setback of two feet from the face of the curb or if no curb exists, four feet from the edge of street pavement.

There shall be no encroachment into required side and rear yard areas except eaves may encroach a maximum of 18 inches into the side yard and 42 inches into the rear yard.

Visibility triangle for corner lots.

A visibility triangle shall remain clear of any obstructions on corner lots. The visibility triangle shall be measured as follows:

Commence at the point of two intersecting curbs, or if no curbs exist at the point of two intersection edges of pavement and measure 20 feet in each direction and connect the points with a line.

Maximum principal building height.

Beachside: Three stories or 42 feet maximum

Mainland: Seven stories or 82 feet maximum

Minimum residential building separation. Where two or more residential buildings are built on one parcel, there shall be a separation of at least 20 feet between the buildings, plus 1.5 additional feet for each five feet of building height over 20 feet. When buildings vary in height, said distance to be based on the tallest building. (Example: If there is a 20-foot-tall building and a 25-foot-tall building, the separation must be 21.5 feet.)

Maximum building coverage. None.

Screen enclosures. As an exception to the maximum building coverage provision any parcel may be allowed an additional ten percent building coverage for only a screen pool enclosure if the following conditions are met:

1. A screen pool enclosure shall only cover the swimming pool and surrounding pool deck and shall have a roof and walls consisting entirely of screening; and
2. There shall be no variances granted to exceed the maximum building coverage or additional coverage allowed for screen enclosures.

Minimum floor area. Minimum floor area of an apartment dwelling unit or attached dwelling unit shall be:

450 square feet of livable area for a one-bedroom unit;

550 square feet of livable area for a two-bedroom unit;

700 square feet of livable area for a three-bedroom unit.

Minimum floor area. Minimum floor area of a rented sleeping room in a hotel, motel, or rooming house shall be 150 square feet.

Buffers. Landscaped buffer area shall be required as follows:

- (1) As defined in this LDR at property lines abutting or facing a residentially zoned lot; and
- (2) A minimum width of five feet at property lines of off-street parking areas, whether requiring class II or III site plan approval or not (new construction expansion or replacement only).

Off-street parking and loading. Off-street parking and loading shall be provided as required in this LDR.

Maximum unit density for all dwelling units. 12 units per acre beachside, 18 units per acre mainland. No less than 3,630 square feet of lot area for each beachside dwelling unit. 2,420 square feet of lot area for each mainland dwelling unit.

Maximum unit density for transient lodging units.

Hospitality future land use designation: 75 units per acre.

Activity center future land use designation: 40 units per acre.

Marina future land use designation: 24 units per acre. Density may be increased up to 48 units per acre if the following conditions are met:

- (1) A minimum of 20 percent of the total usable land area is preserved by deed or easement for public access and/or public recreation; and
- (2)

The public use area shall comprise at least 40 percent of the total linear footage of shoreline available to the property.

All other future land use designations permitting transient lodging units: 24 units per acre.

Minimum requirements for townhouses and townhouse lots.

All lots shall be adjacent to a public right-of-way or common area.

Lots shall have a minimum width of 20 feet where a living unit is to be located.

Lot frontage along a right-of-way or common area shall be a minimum of ten feet.

Front setbacks shall be 20 feet or as required per [sub]section 504.01M. of this LDR.

Side setbacks shall be zero feet.

Rear setbacks shall be 20 feet except if there is a landscaped common area behind the townhome and there is a minimum distance of 20 feet from the project boundary line and the dwelling unit or accessory structures.