

# MIAMI BEACH

## PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: July 27, 2020

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB 19-0336. Sunset Harbour Mixed-Use Neighborhood Overlay District – LDR Amendment.**

### **REQUEST**

**PB 19-0336. Sunset Harbour Mixed-Use Neighborhood Overlay District. AN ORDINANCE** OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142 OF THE CITY CODE, ENTITLED "ZONING DISTRICTS AND REGULATIONS," AT ARTICLE III, ENTITLED "OVERLAY DISTRICTS," TO ESTABLISH DIVISION 14, ENTITLED "SUNSET HARBOUR MIXED-USE NEIGHBORHOOD OVERLAY DISTRICT," TO PROVIDE REGULATIONS FOR FORMULA RESTAURANT AND FORMULA COMMERCIAL ESTABLISHMENTS, INCLUDING DISTANCE SEPARATION REQUIREMENTS, LIMITATIONS ON NUMBER OF ESTABLISHMENTS, AND PROHIBITIONS UNDER CERTAIN CIRCUMSTANCES; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

### **RECOMMENDATION**

Transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

### **HISTORY**

On June 5, 2019, at the request of Commissioner Ricky Arriola, the City Commission referred the discussion item to the Land Use and Development Committee (Item C4 Q). The item was discussed at the September 18, 2019 LUDC meeting, and continued to the October 30, 2019 meeting with direction to include copies of existing formula establishment regulations for reference.

On October 30, 2019, the item was discussed and continued to the December 2, 2019 LUDC, with the following direction:

1. The City Attorney will draft an ordinance for review by the LUDC.
2. The Administration will place a C4 referral item on the December 11, 2019 City Commission agenda, as a place holder, in anticipation of a recommendation for referral to the Planning Board.

The December 2, 2019 LUDC meeting was cancelled, and the item was moved to the January 2020 agenda of the newly created Land Use and Sustainability Committee (LUSC). On December 11, 2019, the City Commission referred the proposed ordinance to the Planning Board (Item C4I).

On January 21, 2020 the LUSC deferred the item to the February 18, 2020 meeting. On February 18, 2020, the LUSC discussed the item and continued it to the March 17, 2020 meeting. The March 17, 2020 LUSC meeting was cancelled. On June 30, 2020 the LUSC recommended that the Planning Board transmit the proposal to the City Commission with a favorable recommendation.

On January 28, 2020, the Planning Board continued the item to the February 25, 2020 meeting. On February 25, 2020, the Planning Board continued the item to the March 24, 2020 meeting. The March 24, 2020 meeting was cancelled and the item was deferred to the May 19, 2020 meeting. On May 19, 2020 the item was deferred to July 27, 2020.

### **REVIEW CRITERIA**

Pursuant to Section 118-163 of the City Code, in reviewing a request for an amendment to these land development regulations, the board shall consider the following when applicable:

1. **Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.**

**Consistent** – The proposed ordinance is consistent with the goals, objectives, and policies of the Comprehensive Plan.

2. **Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.**

**Not applicable** – The proposed amendment does not modify district boundaries.

3. **Whether the change suggested is out of scale with the needs of the neighborhood or the city.**

**Consistent** - The proposed ordinance amendment is not out of scale with the surrounding neighborhood.

4. **Whether the proposed change would tax the existing load on public facilities and infrastructure.**

**Consistent** – The proposed ordinance will not affect the load on public facilities and infrastructure.

5. **Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.**

**Not applicable.** – The proposed amendment does not modify district boundaries.

6. **Whether changed or changing conditions make the passage of the proposed change necessary.**

**Consistent** – The need to ensure that the quality of life of residents in the neighborhood is maintained makes passage of the proposed change necessary.

7. **Whether the proposed change will adversely influence living conditions in the neighborhood.**

**Consistent** – The proposed ordinance amendment will improve living conditions in the neighborhood.

8. **Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.**

**Consistent** – The proposed change will not create or increase traffic congestion from what is currently permitted.

9. **Whether the proposed change will seriously reduce light and air to adjacent areas.**

**Consistent** – The proposed change will not seriously reduce light and air to adjacent areas.

10. **Whether the proposed change will adversely affect property values in the adjacent area.**

**Consistent** – The proposed change should not adversely affect property values in the adjacent areas.

11. **Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.**

**Consistent** – The proposed change should not be a deterrent to the improvement or development of properties in the City.

12. **Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.**

**Not applicable.**

13. **Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.**

**Not applicable.**

#### **COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

Section 133-50(b) of the Land Development Regulations establishes the following review criteria when considering ordinances, adopting resolutions, or making recommendations:

- (1) **Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.**

**Partially Consistent** – The proposal does affect areas that are vulnerable to the impacts of sea level rise in the long term.

**(2) Whether the proposal will increase the resiliency of the City with respect to sea level rise.**

**Consistent** – The proposal will not affect the resiliency of the City with respect to sea level rise.

**(3) Whether the proposal is compatible with the City's sea level rise mitigation and resiliency efforts.**

**Consistent** – The proposal does not diminish and is compatible with the City's sea level rise mitigation and resiliency efforts.

**ANALYSIS**

On October 28, 2019, a town hall meeting was held in Sunset Harbour to discuss the above proposal. The discussion, led by Commissioner Arriola, focused on (i) the current mix of restaurants and retailers that primarily serve residents in the Sunset Harbour neighborhood, and (ii) the appropriateness of adopting regulations on formula commercial establishments. Sixteen residents attended the meeting, and a consensus of the residents present expressed support for placing restrictions on formula commercial establishments in the neighborhood, in order to ensure that restaurants and retailers in Sunset Harbour continue to serve the needs of local residents.

The following is a summary of additional issues raised at the meeting:

- The need to achieve a balance between zoning restrictions vs incentives to businesses and property owners;
- The need for a diversity of uses;
- The high rents in the area; and
- The need to ensure a proper mix of retail and restaurant uses around a vision for the area.

The following additional suggestions were proposed:

- Consider hosting a focus group with restaurateurs;
- Consider additional activation of the area through special events; and
- Conduct a survey of residents on what they would like to see in their community;

In order to address the concerns raised at the town hall meeting, the proposed ordinance establishes the "Sunset Harbour Mixed-Use Neighborhood Overlay District." The proposed overlay prohibits "formula commercial" and "formula retail" establishments within its boundaries. These restrictions are similar to those along Ocean Drive within the Art Deco/MiMo Commercial Character Overlay District.

Formula Commercial Establishments are defined as

*Formula commercial establishment* means a commercial use, excluding office, restaurant

and hotel use, that has ten (10) or more retail sales establishments in operation or with approved development orders in the United States of America; provided, however, for those businesses located in a building that is two (2) stories or less with frontage on Ocean Drive, *formula commercial establishment* means a commercial use, excluding office, restaurant and hotel, which has five (5) or more other establishments in operation or with approved development orders in Miami Beach. In addition to meeting or exceeding the numerical thresholds in the preceding sentence, the definition of formula commercial establishment also means an establishment that maintains two or more of the following features: a standardized (formula) array of merchandise; a standardized façade; a standardized decor or color scheme; uniform apparel; standardized signs, logos, trademarks or service marks. For the purpose of this definition, the following shall apply:

- (1) *Standardized (formula) array of merchandise* means that 50 percent or more of in-stock merchandise is from a single distributor and bears uniform markings.
- (2) *Trademark* means any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if the source is unknown. A trademark may be registered with the U.S. Patent and Trademark Office and/or the Florida Department of State. However, an unregistered trademark may also be protected under common law.
- (3) *Service mark* means any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the services of such person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that the person or the programs may advertise the goods of the sponsor. A service mark may be registered with the U.S. Patent and Trademark Office and/or the Florida Department of State. However, an unregistered service mark may also be protected under common law.
- (4) *Decor* means the style of interior or exterior furnishings, which may include but is not limited to, style of furniture, wall coverings or permanent fixtures.
- (5) *Color scheme* means the selection of colors used throughout, such as on the furnishings, permanent fixtures, and wall coverings, or as used on the facade.
- (6) *Facade* means a face (usually the front) of a building, including awnings, that looks onto a street or an open space.
- (7) *Uniform apparel* means standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hats, and pins (other than name tags) as well as standardized colors of clothing.

A formula restaurant is defined as

*Formula restaurant* means (i) a restaurant with 75 or more establishments in operation or with approved development orders in the United States or a restaurant with more than five (5) establishments in operation or with approved development orders in Miami Beach.

With respect to the preceding sentence, in addition to the numerical thresholds the establishments maintain two (2) or more of the following features: a standardized (formula) array of merchandise; a standardized façade; a standardized decor or color scheme; uniform apparel for service providers, food, beverages or uniforms; standardized signs, logos, trademarks or service marks. For the purpose of this definition, the following shall apply:

- (1) *Standardized (formula) array of merchandise or food* means that 50 percent or more of in-stock merchandise or food is from a single distributor and bears uniform markings.
- (2) *Trademark* means any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if the source is unknown. A trademark may be registered with the U.S. Patent and Trademark Office and/or the Florida Department of State. However, an unregistered trademark may also be protected under common law.
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- (6) *Facade* means a face (usually the front) of a building, including awnings, that looks onto a street or an open space.
- (7) *Uniform food, beverages or apparel/uniforms* means standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hats, and pins (other than name tags) as well as standardized colors of clothing, food or beverages listed on the menus of such establishments or standardized uniforms worn by employees.

The regulations are intended to encourage unique businesses to open in the district. The ordinance is not intended to prohibit national chains from operating within the overlay; but rather it is intended to ensure that they provide unique retail, dining, and personal service experiences for the district. This is consistent with the business patterns that have taken place in the neighborhood since it began to transform from a primarily industrial area to more of a mixed-use area.

The proposed overlay divides Sunset Harbour into two areas:

1. The Perimeter Commercial Corridor, which includes the properties that front:
  - Alton Road between Dade Boulevard and 20<sup>th</sup> Street and
  - Dade Boulevard between Bay Road and Alton Road.
2. The Neighborhood Center, which includes the remainder of the neighborhood within the interior.

The overlay prohibits Formula Commercial Establishments and Formula Restaurants within the Neighborhood Center. The Land Use and Sustainability Committee recommended that the City Commission refer separate ordinances to the Planning Board to regulate uses in the Perimeter Commercial Corridor area and to prohibit other types of uses.

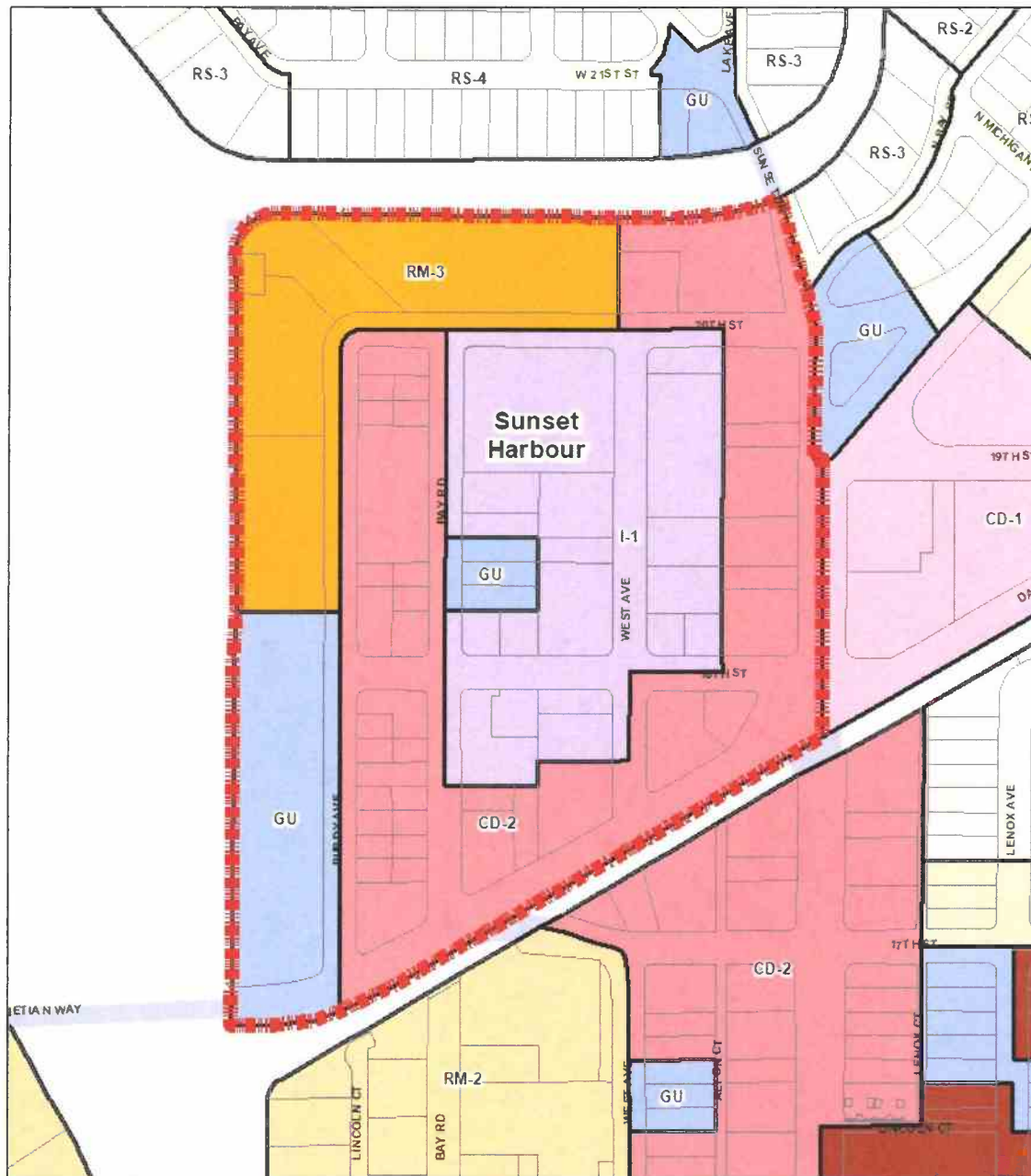
There is a companion Comprehensive Plan amendment proposed to establish a vision and policy directives for the future growth of Sunset Harbour. One such directive is to “Foster the establishment of businesses and restaurants which create dining, retail, and personal service experiences that are unique within the nation.” The proposed LDR amendment is consistent with this vision.

The administration and the City Attorney’s office have retained a land use consultant to study the appropriateness of regulations on formula commercial establishments in Sunset Harbour. The results of the study are under separate cover.

#### **RECOMMENDATION**

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

### Sunset Harbour Zoning Districts





# **SUNSET HARBOUR MIXED-USE NEIGHBORHOOD OVERLAY DISTRICT**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142 OF THE CITY CODE, ENTITLED "ZONING DISTRICTS AND REGULATIONS," AT ARTICLE III, ENTITLED "OVERLAY DISTRICTS," TO ESTABLISH DIVISION 14, ENTITLED "SUNSET HARBOUR MIXED-USE NEIGHBORHOOD OVERLAY DISTRICT," TO PROVIDE REGULATIONS ON FORMULA RESTAURANT AND FORMULA COMMERCIAL ESTABLISHMENTS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the Sunset Harbour Neighborhood is generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south; and

**WHEREAS**, Sunset Harbour is a neighborhood in the midst of a successful transition from what started as a primarily industrial neighborhood into the present vibrant mixed-use residential neighborhood that provides area residents with a unique retail and dining experience; and

**WHEREAS**, formula commercial establishments and formula restaurants are establishments with multiple locations and standardized features or a recognizable appearance, where recognition is dependent upon the repetition of the same characteristics of one store or restaurant in multiple locations; and

**WHEREAS**, formula commercial establishments and formula restaurants are increasing in number in the City of Miami Beach; and

**WHEREAS**, the uniformity of formula commercial establishments, while providing clear branding for retailers, is inconsistent with the City's Vision Statement which includes creating "A Unique Urban and Historic Environment"; and

**WHEREAS**, notwithstanding the marketability of a retailer's goods or services, or the visual attractiveness of the storefront, the standardized architecture, color schemes, decor and signage of many formula commercial establishments detract from the distinctive character, aesthetics, and "flavor" of unique mixed-use residential neighborhoods; and

**WHEREAS**, specifically, the proliferation of formula commercial establishments may unduly limit or eliminate business establishment opportunities for unique businesses in their neighborhoods; and

**WHEREAS**, the proliferation of formula commercial establishments decreases the diversity of retail activity and dining options available to local residents; and

**WHEREAS**, the increased level of homogeneity detracts from the uniqueness of residential and mixed-use neighborhoods, which thrive on a high level of interest maintained by a mix of retail and dining experiences that are not found elsewhere in the world; and

**WHEREAS**, the Mayor and City Commission desire to promote and preserve the mix of unique restaurants and retail uses that primarily serve residents in the Sunset Harbour Neighborhood; and

**WHEREAS**, it is the intent of the City that if an establishment that has multiple locations and standardized features, or a recognizable appearance, seeks to locate within Sunset Harbour, that such establishment provide a unique and different array of merchandise, façade, décor, color scheme, uniform apparel, signs, logos, trademarks, and service marks; and

**WHEREAS**, the amendments set forth below are necessary to accomplish the objectives identified herein.

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA.**

**SECTION 1.** The following provisions of Chapter 114 of the City Code, entitled "General Provisions," are hereby provided for reference purposes:

**CHAPTER 114  
GENERAL PROVISIONS**

**Sec. 114-1. Definitions.**

The following words, terms and phrases when used in this subpart B, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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*Establishment, as used in the definitions of Formula restaurant and Formula commercial establishment, means a place of business with a specific store name or specific brand. Establishment refers to the named store or brand and not to the owner or manager of the store or brand. As an example, if a clothing store company owns four (4) brands under its ownership umbrella and each branded store has 10 locations, the term "Establishment" would refer only to those stores that have the same name or brand.*

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*Formula restaurant means (i) a restaurant with 75 or more establishments in operation or with approved development orders in the United States, or a restaurant with more than five (5) establishments in operation or with approved development orders in Miami Beach. With respect to the preceding sentence, in addition to the numerical thresholds, the establishments maintain two (2) or more of the following features: a standardized (formula) array of merchandise; a standardized façade; a standardized decor or color scheme; uniform apparel for service providers, food, beverages or uniforms; standardized signs, logos, trademarks or service marks. For the purpose of this definition, the following shall apply:*

- (1) *Standardized (formula) array of merchandise or food* means that 50 percent or more of in-stock merchandise or food is from a single distributor and bears uniform markings.
- (2) *Trademark* means any word, name, symbol, or device, or any combination thereof, used

by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if the source is unknown. A trademark may be registered with the U.S. Patent and Trademark Office and/or the Florida Department of State. However, an unregistered trademark may also be protected under common law.

- (3) *Service mark* means any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the services of such person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that the person or the programs may advertise the goods of the sponsor. A service mark may be registered with the U.S. Patent and Trademark Office and/or the Florida Department of State. However, an unregistered service mark may also be protected under common law.
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*Formula commercial establishment* means a commercial use, excluding office, restaurant and hotel use, that has ten (10) or more retail sales establishments in operation or with approved development orders in the United States of America; provided, however, for those businesses located in a building that is two (2) stories or less with frontage on Ocean Drive, *formula commercial establishment* means a commercial use, excluding office, restaurant and hotel, which has five (5) or more other establishments in operation or with approved development orders in Miami Beach. In addition to meeting or exceeding the numerical thresholds in the preceding sentence, the definition of formula commercial establishment also means an establishment that maintains two or more of the following features: a standardized (formula) array of merchandise; a standardized façade; a standardized decor or color scheme; uniform apparel; standardized signs, logos, trademarks or service marks. For the purpose of this definition, the following shall apply:

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- (7) *Uniform apparel* means standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hats, and pins (other than name tags) as well as standardized colors of clothing.

\* \* \*

**Section 2.** Chapter 142 of the City Code, entitled "Zoning Districts and Regulations," at Article III, entitled "Overlay Districts," is hereby amended as follows:

**CHAPTER 142  
ZONING DISTRICTS AND REGULATIONS**

\* \* \*

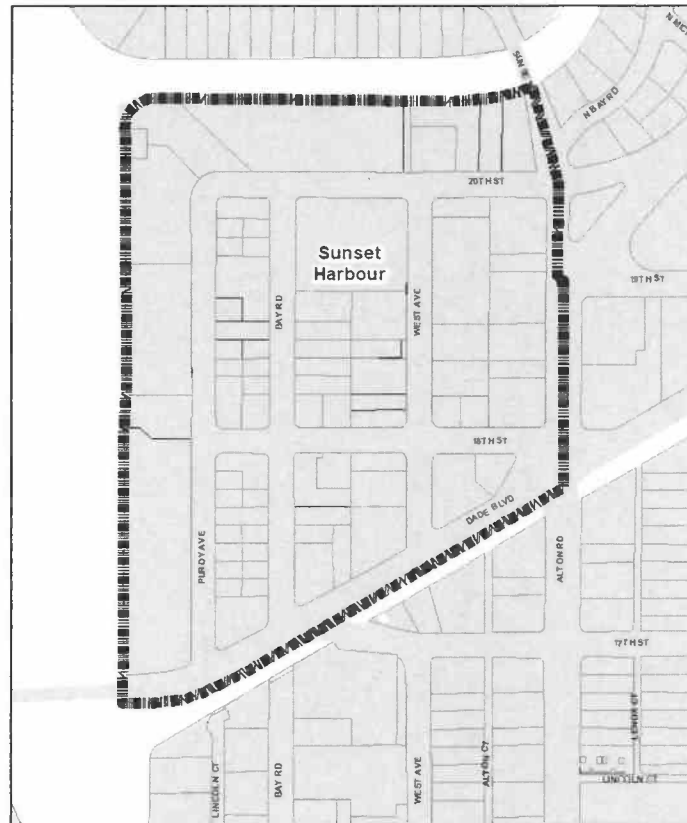
**ARTICLE III. – OVERLAY DISTRICTS**

\* \* \*

**DIVISION 14 – SUNSET HARBOUR MIXED-USE NEIGHBORHOOD OVERLAY DISTRICT**

**Sec. 142-870.19. – Location and purpose.**

- (a) There is hereby created the Sunset Harbour Mixed-Use Neighborhood Overlay District (the "Overlay District"). The Overlay District consists of the properties in the Sunset Harbour Area, which is generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south, as further identified in the map below:



- (a) The Sunset Harbour Mixed-Use Neighborhood Overlay District shall have two areas, as follows:
- (1) Perimeter Commercial Corridors: The Perimeter Commercial Corridors include the properties fronting Dade Boulevard between Bay Road on the west and Alton Road on the east; and the properties fronting Alton Road between Dade Boulevard on the south and 20<sup>th</sup> Street on the north.
  - (2) Neighborhood Center: The neighborhood center includes all properties that are not within the Perimeter Commercial Corridors, as described above.
- (b) The purpose of this Overlay District is to limit the proliferation of uses which may diminish the character of a unique mixed-use residential neighborhood within the City. This Overlay District is designed based on and intended to achieve the following facts and intents:
- (1) Sunset Harbour has evolved from what started as a primarily industrial and commercial neighborhood, into the present vibrant mixed-use residential neighborhood that provides area residents with a unique retail and dining experience;
  - (2) Formula commercial establishments and formula restaurants are establishments with multiple locations and standardized features or a recognizable appearance, where recognition is dependent upon the repetition of the same characteristics of one store or restaurant in multiple locations;

- (3) Formula commercial establishments and formula restaurants are increasing in number in mixed-use and commercial districts within the City;
- (4) The sameness of formula commercial establishments, while providing clear branding for retailers, counters the City's Vision Statement which includes creating "A Unique Urban and Historic Environment";
- (5) Notwithstanding the marketability of a retailer's goods or services or the visual attractiveness of the storefront, the standardized architecture, color schemes, decor and signage of many formula commercial establishments detract from the distinctive character and aesthetics of unique mixed-use residential neighborhoods like the Sunset Harbour Neighborhood; and
- (6) Specifically, the proliferation of formula commercial establishments may unduly limit or eliminate business establishment opportunities for independent or unique businesses, thereby decreasing the diversity of retail activity and dining options available to local residents; and
- (7) The increased level of homogeneity detracts from the uniqueness of residential and mixed-use neighborhoods, which thrive on a high level of interest maintained by a mix of retail and dining experiences that are not found elsewhere in the city, state, or country;
- (8) It is the intent of the City that if an establishment that has multiple locations and standardized features or a recognizable appearance seeks to locate within certain areas affected by this ordinance that such establishment provide a distinct array of merchandise, façade, décor, color scheme, uniform apparel, signs, logos, trademarks, and service marks.

**Sec. 142-870.20. – Compliance with regulations.**

The following regulations shall apply to the Overlay District. There shall be no variances allowed from these regulations. All development regulations in the underlying zoning district and any other applicable overlay regulations shall apply, except as follows:

(a) The following limitations shall apply to the commercial uses listed below:

- (1) Formula commercial establishments and formula restaurants shall be prohibited in the Neighborhood Center area of the Overlay District.

(b) Review procedures.

- (1) Commercial establishments in the Overlay District that are not identified in section 142-870.20(a) shall comply with the following regulations:
  - a. A signed and notarized affidavit indicating that they are not an establishment that is regulated by section 142-870.20(a) shall be provided to the city as part of the application for obtaining a business tax receipt, certificate of use, and/or building permit, as applicable.

- b. If the establishment is found not to be in compliance with the applicable requirements of the signed affidavit, the business tax receipt will be revoked, and the establishment shall immediately cease operation.

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**SECTION 3. Repealer.**

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith are hereby repealed.

**SECTION 4. Codification.**

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

**SECTION 5. Severability.**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 6. Effective Date.**

This Ordinance shall take effect ten days following adoption.

**PASSED and ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

**ATTEST:**

\_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Rafael E. Granado, City Clerk

First Reading:

Second Reading:

Verified by: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

Sponsored by Commissioner Ricky Arriola