

Sunset Harbour Neighborhood

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## **I. Executive Summary**

The City is currently proposing an amendment to its Land Development Regulations that creates a mixed-use Neighborhood Overlay District for the Sunset Harbour Neighborhood that would create an outer zone for the neighborhood where formula retail and formula establishments would be permitted subject to applicable regulations and would create an inner neighborhood zone where smaller scale and distinctive commercial, residential and light industrial uses would be envisioned

Since 1989, the Mayor and the City Commission have adopted a series of Citywide Land Development Regulations to create Overlay and Neighborhood Conservation Districts in an effort to protect the unique character of the City's neighborhoods and districts and to promote compatible development.

The story of Sunset Harbour is one of a neighborhood in transition; the neighborhood has evolved from light industrial uses that originally occupied the area to a hip, walkable urban neighborhood comprised of an area of mixed uses, including residential. Sunset Harbour is composed of a mixture of residential, light industrial and distinctive low intensity service, restaurant, and retail uses.

The purpose of this Overlay District is to continue to create and promote the planned but organic character and scale of the Sunset Harbour Neighborhood. The City has invested millions of dollars and countless hours to create an economically viable and distinctive neighborhood where residents can live near the hustle and bustle of the Greater South Beach area, but not in it. Moreover, the transition that Sunset Harbor is currently undergoing has created a neighborhood that is distinct in character from any other neighborhood in Miami Beach. In order to make this happen, the City has invested in a new central parking garage to serve the entire neighborhood, encourage neighborhood walkability, and reduce traffic; it has raised the streets of the Sunset Harbor neighborhood three full feet to ensure that it is resilient against climate change and sea-level rise; and it has revamped and remodeled the neighborhood park to provide a much needed peaceful respite for this neighborhood.

Over the last decade the Mayor and City Commission have also adopted and amended specific regulations for the Sunset Harbour Neighborhood in order to promote a more pedestrian- friendly, economically viable and vibrant mixed-use neighborhood near the action but not in it.

Sunset Harbour has been described as “a pedestrian-friendly enclave (with bountiful parking)” and “[a] micro-neighborhood [...] densely populated with both casual and upscale restaurants”, also, “one of Miami’s most popular boutique neighborhoods for shopping and dining”. This neighborhood is an example of how the coexistence of industrial, retail, and residential uses can promote a unique and sustainable urban environment.

A windshield survey shows approximately 19 to 20 restaurants, 12 health related uses that promote well-being, approximately 2 to 3 water-oriented activities, in addition to the Sunset Harbour Yacht Club, a full-service boutique marina and a variety of unique neighborhood businesses.

The increasing desirability and neighborhood qualities of Sunset Harbour have driven the need to promote is newly vibrant “character”. Character has been defined as an amalgamation of attributes and assets that add up to a unique identity for a neighborhood. It may include “built form, landscape, history, people, and their activities”. The primary vehicle for protecting the character of a neighborhood is through the establishment of an Overlay or Conservation District.

Formula Business Establishments are currently concentrated in the outer zone of the Sunset Harbor neighborhood, bordered by Alton Road to the east, Dade Boulevard to the south, both main commercial corridors. This outer zone also has plenty of available and viable spaces for new formula businesses to develop. The inner zone of the Sunset Harbor neighborhood has, for the most part, remained hip, trendy, and unique as well as low intensity with businesses servicing residents and visitors with retail stores and restaurants not found elsewhere in the City or in the World. The propose Overlay District would codify these elements of what started by careful planning and organic development.

This document consists of a review of the proposed Sunset Harbour Mixed-Use Neighborhood Overlay District regulation; existing City's regulations, and whether the proposed Ordinance is supported by the Goals, Objectives, and Policies of the Comprehensive Plan.

I have also undertaken a review of ordinances that have been implemented in other cities with similar neighborhoods in order to determine what regulations other cities have used to preserve the distinct character of their neighborhoods.

I have concluded that the City's proposed Ordinance is supported by existing City of Miami Beach Goals, Objectives, and Policies of the Comprehensive Plan and is consistent with established Planning practices. It will further the desired outcome of advancing the character of Sunset Harbour and promoting a vibrant, mixed-use residential neighborhood. Therefore, I recommend that the City Commission adopt the proposed Ordinance.

## **II. Vision, Comprehensive Plan & Land Development Regulations**

The City's Comprehensive Plan and its Goals and Objectives, as well as its Land Development Regulations, exist to support the well-being and interests of its various citizens. A critical aspect of these is to minimize threats to health, safety, and welfare through regulation of uses of land to ensure the compatibility of adjacent land uses.

The following provisions of the City's Comprehensive Plan and Land Development Regulations are relevant to a land use analysis of the proposed regulations for the Sunset Harbour Neighborhood.

### **A. Vision and Guiding Principles**

The Vision Statement defines the City of Miami Beach as "A Unique and Historic Environment".

*"A PROSPEROUS CITY with a special flavor of arts, culture, education, and business; A SAFE CITY with a mosaic of residents enjoying life in iconic and historic NEIGHBORHOODS; A RESILIENT COASTAL CITY with a thriving environment and modern infrastructure; A RESILIENT COASTAL CITY with a thriving environment and modern infrastructure; A SMART CITY of high quality and efficient services and employees."*

*Miami Beach – The City That Evokes All Senses*

<https://www.miamibeachfl.gov/city-hall/city-manager/mission-vision-and-values/>

### **Guiding Principle – Enhance Community Character**

"The City shall encourage redevelopment that enhances the character of existing development by maximizing context sensitive design through appropriate architecture, compatible scale, and pedestrian-friendly features."

## **B. Comprehensive Plan – Goals, Objectives, and Policies**

The State of Florida mandates that all local governments adopt a Comprehensive Plan to regulate future development actions. The State of Florida requires that all development regulations and actions be consistent with this adopted plan.

According to Section 163.3194(1)(a), Florida Statutes:

*“...After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.”*

The City of Miami Beach defines the Comprehensive Plan as the document adopted by the City Commission in accordance with the Local Government Comprehensive Planning and Land Development Regulation Act of 1986, as amended, meeting the requirements of F.S. §§ 163.3177 and 163.3178; principles, guidelines, and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the City.

The following section identifies goals, objectives and policies within elements of the Comprehensive Plan that support Land Development Regulations to enhance and protect the character and quality of life in the City of Miami Beach.

### **COMPREHENSIVE PLAN - ELEMENTS**

#### **GUIDING PRINCIPLES**

The intent of the guiding principles is to provide an overview of the priorities and objectives of the Element to aid in local government planning and decision making, including but not limited to the amendments to this Element and the City’s Land Development Regulations, as well as applications for Future Land Use and Zoning map amendments.

## **a. RESILIENT LAND USE (RLU) AND DEVELOPMENT ELEMENT**

### **Goal RLU 1**

Preserve and enhance the character of Miami Beach and its quality of life through the implementation of future land use and land development requirements that maximize the potential for economic benefit and the enjoyment of natural and man-made resources, while minimizing the threat to health, safety and welfare posed by hazards, nuisances, incompatible land uses, and environmental degradation

**Objective RLU 1.1:** Establishment of Future Land Use Categories. The City hereby adopts future land use map categories to provide for an efficient distribution and compatible pattern of land uses, and to maintain and enhance the character of the community.

**Policy RLU 1.1.7 HIGH DENSITY MULTI FAMILY RESIDENTIAL (RM-3) Purpose:** To provide development opportunities for and to enhance the desirability and quality of existing and/or new high-density multi-family residential and hotel areas.

**Policy RLU 1.1.9 MEDIUM INTENSITY COMMERCIAL (CD-2) Purpose:** To provide development opportunities for and to enhance the desirability and quality of existing and/or new medium intensity commercial areas which serve the entire City.



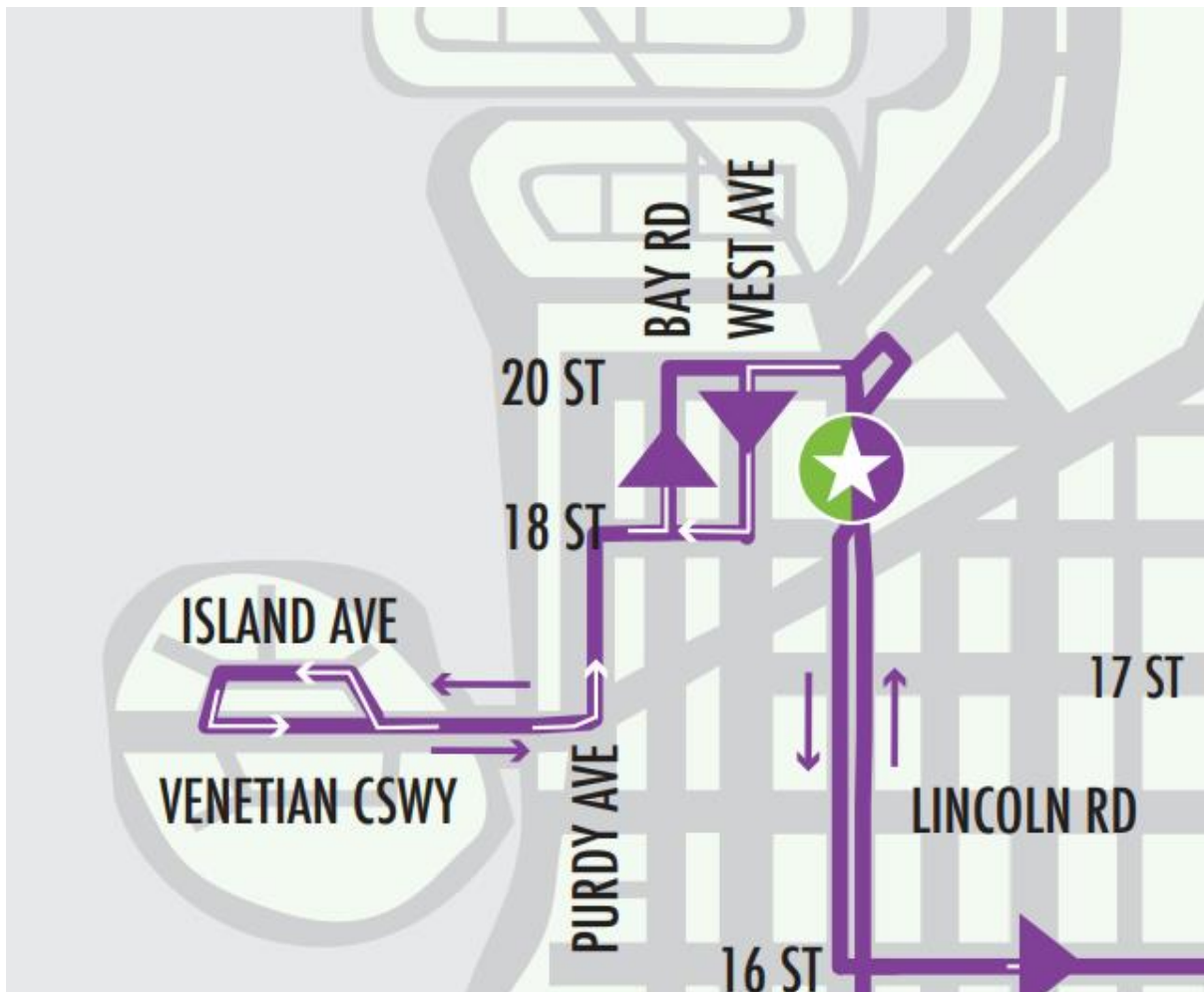
## **b. TRANSPORTATION ELEMENT (TE)**

### **Goal TE 2: Putting People First**

**Objective TE 2.1:** Enhance, Protect, and Preserve the City's Neighborhoods. To provide a safe and attractive transportation system throughout the City that meets the needs of the users of the right-of-way, the neighborhoods, the neighboring communities, and the environment.

**Policy TE 2.1.2:** The City shall strive to protect the residential neighborhoods from unnecessary traffic intrusion through the evaluation and implementation of traffic calming, regulatory or operational alternatives identified in the adopted Street-Design Guidelines which would provide incentives for non-local traffic to remain on the designated arterial network.

## Miami Beach South Beach Trolley Route Through Sunset Harbour



### C. Current Regulations and Timeline

#### Land Development Regulations – Sunset Harbour

There are three Land Development categories within the Sunset Harbour Neighborhood which were established in 1989, and have been subsequently modified.

##### 1. RM – 3 Residential Multi-Family, High Density

The RM – 3 Residential Multi-Family, High Density District is designed for high intensity multi-family residences and hotels.

2. CD – 2 Commercial Medium Intensity

The CD – 2 Commercial, Medium Intensity District provides for commercial activities, services, offices, and related activities which serve the entire City.

3. I – 1 Urban Light Industrial

The I – 1 Urban Light Industrial District is to permit light industrial uses that are generally compatible with one another and with adjoining residential or commercial districts.

## **Sunset Harbour Neighborhood Timeline of Land Development Regulations**

### **2009**

Ordinance No. 2009-3663 – Amended the list of Permitted, Conditional and Prohibited uses in the I-1 Urban Light Industrial District Land Development Regulations to address residents’ concerns about incompatible uses that would have an adverse impact on the quality of life. Specifically, the ordinance fine-tuned the list of permitted uses, and made substantial amendments to the list of conditional uses (by adding automotive, industrial, and towing uses).

### **2012**

Ordinance No. 2012-3786 – Created a new Parking District No.5 and amended the Permitted, Conditional and Prohibited uses in the I-1 Urban Light Industrial District and CD-2 Commercial Medium Intensity District to reflect a neighborhood in transition from light industrial uses to an area of mixed use.

The creation of Parking District No. 5 reduced or eliminated required parking for small commercial businesses. The ordinance also amended the I-1 and CD-2 to set lower thresholds for conditional use review of certain uses and to prohibit, in the CD-2 District, certain uses such as outdoor entertainment establishments, neighborhood impact establishments and open-air entertainment establishments.

The purpose of this ordinance is to “lessen the intensity of the uses in order to provide uses compatible with the residential aspect of the neighborhood and to provide incentives for a low scale neighborhood friendly development where people and commerce can exist side by side and promote a better quality of life and a pedestrian friendly neighborhood”.

## **2013**

Ordinance No. 2013-3802 – Sunset Harbour Parking Requirements.  
Amended parking requirements for residential and live-work type uses.

The purpose of this ordinance is to provide “incentives for a low scale, neighborhood friendly residential development particularly as part of the adaptive re-use existing structures where people and commerce can exist side by side” and promoting a “more pedestrian - friendly neighborhood”.

## **2014**

Ordinance No. 2014-3905 – Parking District No. 5 – Sunset Harbour  
The purpose of this ordinance is to remove the two-year sunset provision for Parking District No. 5, in order to continue, “to support the surrounding neighborhood growth of small, resident-oriented businesses”.

The creation of the Sunset Harbour Parking District has “encouraged uses that are compatible with the low scale character of the neighborhood” and “has resulted in a better quality of life for the residents of the area and a more pedestrian friendly neighborhood”. Removing the sunset provision was determined to be necessary to continue accomplishing these neighborhood objectives.

## **2015**

Ordinance No. 2015-3983 – Sunset Harbour CD-2 Entertainment Prohibition  
Sunset Harbour is a neighborhood comprised of a mix of residential and commercial uses in close proximity.

The purpose of this ordinance is to prohibit uses such as stand-alone bars,

entertainment establishments, and dance halls, which are located within the CD-2 District, on the basis that they are incompatible with the low scale character of the Sunset Harbour Neighborhood.

## **2016**

### **Ordinance No. 2016-4046 – Sunset Harbour - Alcoholic Beverage Establishment Regulations**

The purpose of this ordinance is to establish additional requirements for alcoholic beverage establishments, whether as a main use, conditional or an accessory use. The ordinance establishes hours of operation for alcohol prohibits above-ground alcoholic beverage establishments and prohibits special events within any alcoholic beverage establishment within the Sunset Harbour neighborhood. The ordinance also clarified that outdoor entertainment establishments, neighborhood impact establishments, and open-air entertainment establishments are prohibited uses within the I-1 Light Industrial District of the Sunset Harbour neighborhood.

## **2019**

### **Ordinance No. 2019-4293- Sunset Harbour Parking Reductions to Incentivize Resiliency**

The purpose of this ordinance is to promote economic development by incentivizing improvements that promote resiliency within Sunset Harbour by reducing or eliminating parking requirements, or authorizing operators to pay an annual fee in lieu of providing required parking.

## **2020**

On December 11, 2019, the City Commission referred an Ordinance to the City's Planning Board, in order to eliminate any exceptions to the 2:00 a.m. closing time for alcoholic beverage establishments in Sunset Harbour. As referenced in the recitals to the Ordinance, alcoholic beverage establishments "can, if not regulated, be incompatible with the scale, character, and quality of life of

adjacent residential neighborhoods.” In order to promote the compatibility of eating and drinking establishments with the surrounding neighborhood, the Ordinance clarifies that the 2:00 a.m. closing time shall apply to all alcoholic beverage establishments in Sunset Harbour. The Planning Board reviewed the Ordinance on January 28, 2020, and transmitted it to the City Commission with a favorable recommendation. The Ordinance was approved by the City Commission at First Reading on February 12, 2020, and is scheduled for Second Reading on March 18, 2020.

## **D. Overlay and Neighborhood Conservation Districts**

An Overlay District is a set of regulations which are superimposed upon and supplement, but do not replace, the underlying Zoning District and regulations otherwise applicable to the designated area.

Overlay Districts and Neighborhood Conservation Districts (NCDs) have been increasingly used as a technique by local jurisdictions as a means of protecting the character of historic neighborhoods and promoting a salubrious character of transitioning neighborhoods that are being threatened by incompatible encroachment, development, or other changes that are inconsistent with the City's Comprehensive Plan for the area.

The City of Miami Beach has 12 zoning overlay districts. Of the 12, eight (8) overlay districts provide additional regulations for uses beyond what is prohibited in the underlying zoning districts. In particular, the Alton Road Historic District Buffer Overlay, which is in close proximity to Sunset Harbour, limits the scale of commercial establishments and restricts entertainment establishments. The Art Deco/MiMo Commercial Character Overlay incorporates restrictions on Formula Retail and Formula Restaurants along the most historic portions of Ocean Drive, similar to the restrictions being proposed for Sunset Harbour.

NCD regulations are generally applied when the area to be promoted has a distinct developing physical character but does not merit a historic preservation designation. An NCD may be favored over historic designation when it is not the history of the neighborhood that is important but the livability and economic viability of newly grown neighborhood is at issue.

The City of Miami Beach has created Overlay Districts since as early as 1989 and Conservation Districts since as early as 2004.

The City of Miami Beach describes a Neighborhood Conservation District as follows:

Intent:

A neighborhood conservation district (NCD) is a protective land use tool

that provides criteria and a mechanism to be implemented when desired for the maintenance of neighborhood characteristics.

Such districts and the regulations adopted for them shall be consistent with and promote the policies set out in, the Miami Beach Comprehensive Plan and other official adopted plans and regulations.

**Objective:**

The purpose is to provide a land-use or zoning tool to conserve established neighborhood scale and character and to promote compatible development through the sensible regulation. And to protect neighborhoods or districts that have significant architectural and historic merit and a distinct character but do not qualify for historic designation.

**List of Miami Beach Overlay and Conservation Districts**

**1. DUNE PRESERVATION OVERLAY**

The regulations of this division are designed to accommodate and promote recreational, open space and related uses

Ord. No. 89-2665, § 15-3, eff. 10-1-89

**2. OCEANFRONT OVERLAY**

Additional regulations for oceanfront lots.

These regulations apply to buildings and structures located west of the bulkhead line.

Ord. No. 89-2665, § 6-27, eff. 10-1-89; Ord. No. 90-2722, eff. 11-21-90

**3. CONVENTION HOTEL OVERLAY**

Maximum floor area ratio for convention hotel development city center/historic convention village redevelopment and revitalization area.

Ord. No. 2002-3374, § 1, 6-19-02; Ord. No. 2004-3458, § 1, 10-13-04

**4. WEST AVENUE BAY FRONT OVERLAY**

The purpose in identifying this subject overlay district is to provide district specific land development regulations and land-use incentives to property owners and developers who retain existing structures and/or provide new infill



structures that maintain the low-scale, as-built character predominant in the existing low intensity (RM-1) and medium intensity (RM-2) underlying residential zoning district of the subject overlay area.

Ord. No. 2002-3374, § 1, 6-19-02; Ord. No. 2004-3458, § 1, 10-13-04

**5. GILBERT M. FEIN NEIGHBORHOOD CONSERVATION OVERLAY (NCD-1/RM-2)**

The Intent of this Neighborhood Conservation Designation is to establish a comprehensive series of protective and incentive legislative elements including zoning overlays, zoning revisions, design guidelines and other mechanisms provided for the Lincoln Terrace and 16<sup>th</sup> Street-end neighborhood of the City of Miami Beach to be known as the Gilbert M. Fein Neighborhood Conservation District

Ord. No. 2005-3497, § 2, 10-19-05)

**6. COLLINS PARK ARTS DISTRICT OVERLAY**

The purpose of this overlay district is to provide land-use incentives to property owners, developers and commercial businesses to encourage arts-related businesses within the district

Ord. No. 2007-3577, § 1, 10-17-07; Ord. No. 2016-4061, § 1, 11-9-16)

**7. 40TH STREET OVERLAY**

The purpose of this overlay district is to provide pedestrian-friendly religious institutional uses through the conditional use permit process at the properties to serve the surrounding residential uses.

Ord. No. 2011-3714, § 2, 1-19-11)

**8. ALTON ROAD - HISTORIC DISTRICT BUFFER OVERLAY**

The purpose of this overlay district is to minimize the impacts of development along Alton Road on residential properties located in the Flamingo Park Historic District and the Palm View Historic District.

Ord. No. 2014-3871, § 1, 5-21-14)

**9. FAENA DISTRICT OVERLAY**

The purpose of this overlay district is to allow limited flexibility of uses and limited increases in heights because of the common ownership and operation of the properties within the overlay district.

Ord. No. 2014-3913, § 1(142-871), 12-17-14

10. OCEAN TERRACE OVERLAY

The purpose of this overlay district is to Stimulate neighborhood revitalization and encourage new development and renovation of important historic buildings within the Ocean Terrace/Collins Avenue corridor, Encourage private property owners to assemble and redevelop properties comprehensively, Improve the pedestrian environment of the neighborhood and Maintain the scale, massing and character of the existing building typology adjacent to the public sidewalks.

Ord. No. 2016-4021, § 1, 6-8-16)

11. ART DECO - MIMO COMMERCIAL CHARACTER OVERLAY DISTRICT

The purpose of this overlay district is to limit the proliferation of uses which may diminish the character of historic commercial areas within the city.

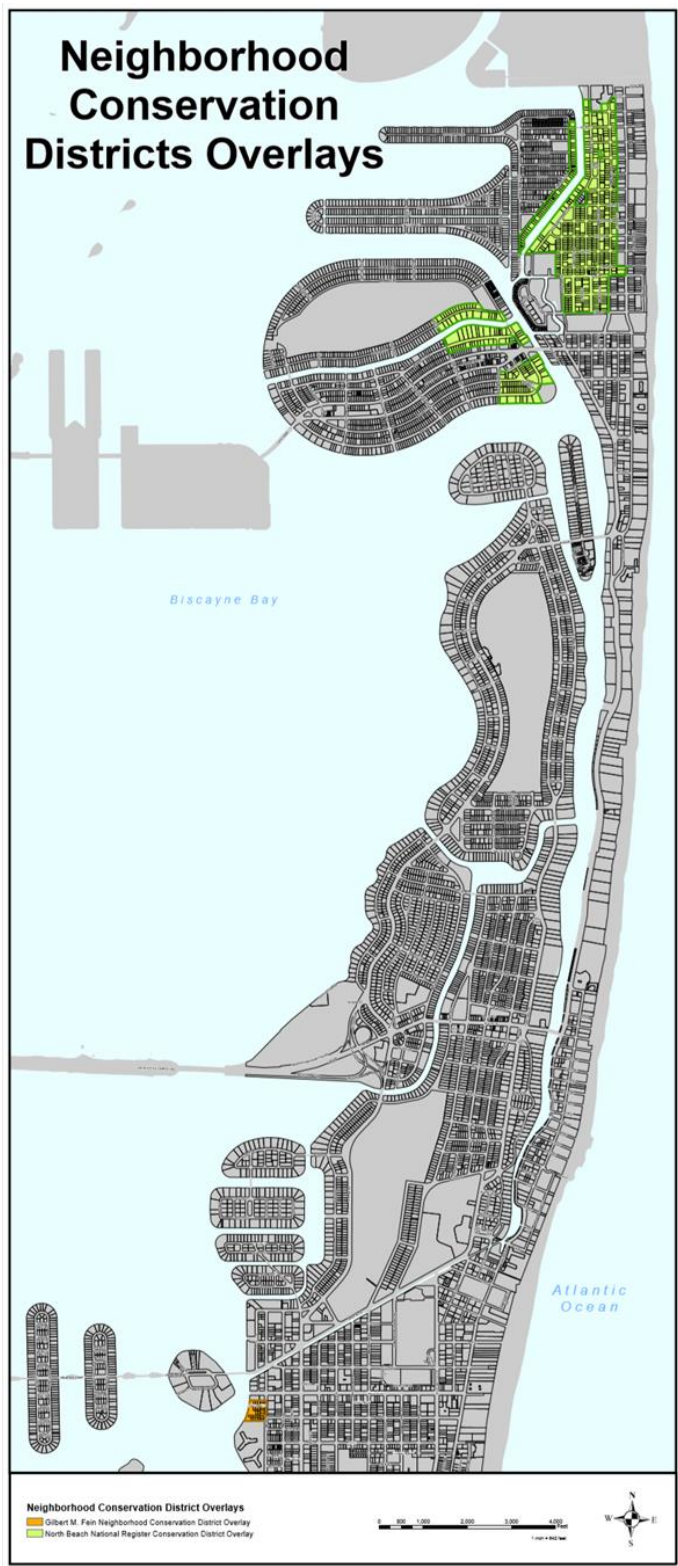
Ord. No. 2017-4137, § 2, 9-25-17

12. NORTH BEACH NATIONAL REGISTER CONSERVATION DISTRICT OVERLAY

The purpose of this overlay district is to Provide land-use regulations that encourage the retention and preservation of existing "contributing" buildings within the National Register Districts, to promote walking, bicycling and public transit modes of transportation and to ensure that the scale and massing of new development is consistent with the established context of the existing residential neighborhoods and maintains the low-scale, as-built character of the surrounding neighborhoods

Ord. No. 2018-4187, § 2(142-880), 4-11-16

Neighborhood Conservation Districts Overlays



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### **III. Proposed Amendment**

#### **Sunset Harbour Mixed-Use Neighborhood Overlay District**

This land use analysis examines a proposed ordinance amending Chapter 142 of the Miami Beach City Code entitled “Zoning Districts and Regulations”, Article III, “Overlay Districts”, Division 14, “Sunset Harbour Mixed-Use Neighborhood Overlay District”, to provide regulations on formula restaurant and formula commercial establishments.

Over the last few decades, the City has adopted several ordinances creating Overlay Districts in order to maintain the scale and character of established neighborhoods.

The proposed Overlay District protects the emerging unique character of the Sunset Harbour neighborhood and will promote a more pedestrian friendly and vibrant mixed-use neighborhood.

## **IV. Analysis**

### **A. Sunset Harbour Neighborhood**

Sunset Harbour is a neighborhood that has evolved from the light industrial uses that originally occupied the area and continues to evolve into an area of mixed uses including residential development. The neighborhood is composed of a mixture of residential, light industrial and low intensity service, restaurant and retail uses.

Sunset Harbour has been described as “a pedestrian-friendly enclave (with bountiful parking)”; “[a] micro-neighborhood [...] densely populated with both casual and upscale restaurants”; and “one of Miami’s most popular boutique neighborhoods for shopping and dining”.

Sunset Harbour is a pedestrian oriented neighborhood. A windshield survey indicates many people access area businesses by walking as opposed to driving. The City is actively improving pedestrian connectivity which is increasing the walking trend. This includes a new pedestrian bridge on Bay Road and a new bridge with sidewalks on West Avenue that greatly improve connectivity to areas to the south.

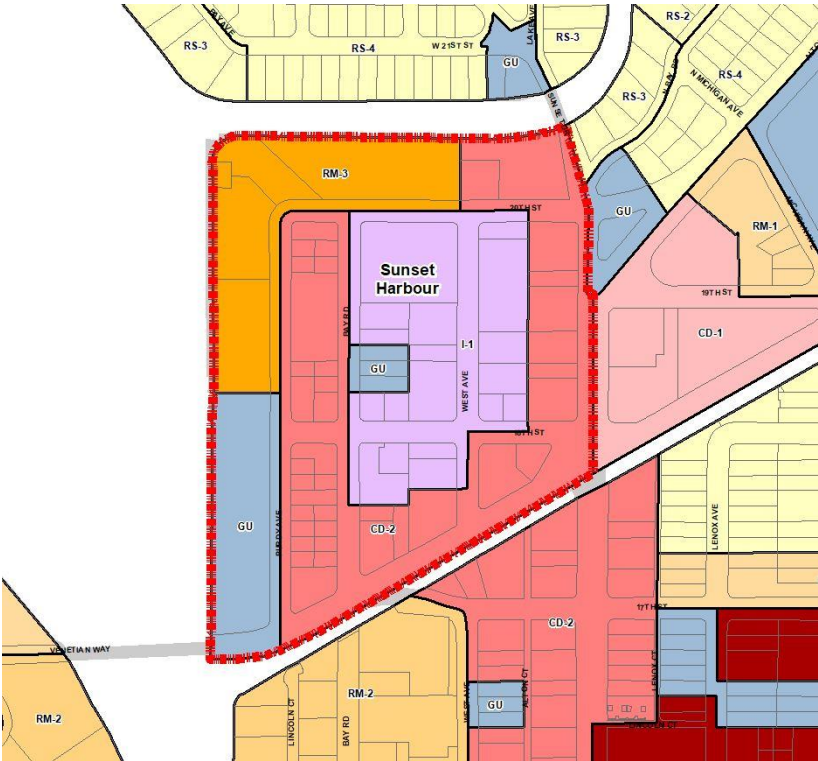
Additionally, there are improved pedestrian and bicycle facilities along 17th Street, Dade Boulevard, and the Venetian Causeway. It is well served by the City of Miami Beach South Beach Trolley Loop and Metrobus routes A, S, and M. Sunset Harbour is served by a centralized parking garage, the Sunset Harbour Garage. Information on parking utilization from the Parking Department indicates that the garage does not reach capacity, even during peak periods, providing evidence of increasing pedestrian activity and the use of alternative modes of transportation.

A visual inspection shows approximately 20 restaurants; 12 health uses; and several water-oriented activities, in addition to the Yacht Club, a full-service boutique marina; and a variety of independent neighborhood businesses. Formula Business Establishments are concentrated on Alton Road, a main commercial corridor and arterial roadway exterior to the neighborhood. In

contrast, those businesses that promote the unique identity of the Sunset Harbour Neighborhood are primarily concentrated in the interior of the neighborhood.

The Sunset Harbour Neighborhood is an example of how the coexistence of industrial, retail, and residential uses can promote a unique and sustainable urban environment.

Sunset Neighborhood Map and Chart



	Housing Units	Pop.	Area of Parcels (SF)	Area of Parcels (Acres)	Housing Density (Units/Acre)	Population Density (People/Acre)
Sunset Harbour	581	793	1,230,082	28.24	21	28

(Map and chart prepared by the City of Miami Beach Planning Department)



## B. Neighborhood Character and Impact of Formula Establishments

The character of a neighborhood is defined, in part, by the variety of businesses that it contains. In order to promote a particular desirable characteristic of a particular neighborhood, cities are increasingly regulating the types of businesses allowed.

Formula Restaurants and Formula Retail Establishments are retail stores that have multiple locations with the same recognizable appearance, and are generally known as chain stores. They offer a standardized selection of merchandise, standard façade, color scheme, and signage. City Code Section 114-1 defines “formula restaurant” and “formula commercial establishment” as follows:

***Formula commercial establishment*** means a commercial use, excluding office, restaurant and hotel use, that has ten 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 stories or less with frontage on Ocean Drive, formula commercial establishment means a commercial use, excluding office, restaurant and hotel, which has five 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 facade: 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) Façade 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.*

**Formula restaurant** means 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 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 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.*

Many cities have adopted measures to limit the incidence of Formula Restaurants and Formula Retail Establishments due to the negative impact they can have on the character of a neighborhood. Unregulated, Formula Restaurants and Formula Retail Establishments will drive out the trendy and distinctive shops that primarily service the surrounding neighborhood and form part of the unique neighborhood character.

Due to the increasing desirability and neighborhood qualities of the Sunset Harbour neighborhood, the City of Miami Beach has opted to explore the creation of restrictions on Formula Retail Establishments.

## **C. Formula Restaurant and Formula Commercial Establishment Regulations in Other Cities**

### **Examples of District/Use Regulations in Other Cities or Counties**

Local governments across the country have used a variety of methodologies to regulate Formula Restaurants and Formula Commercial Establishments.

The approaches vary from strictly prohibiting the use, to allowing the use as a conditional use with specific restrictions or requiring a special use permit, or a combination of both.

Definitions of Formula Business or Retail Establishment here are generally consistent across the jurisdictions I have reviewed. All definitions include the following features: a standardized array of merchandise, a standardized façade, a standardized décor and color scheme, uniform apparel, standardized signage, a trademark of services. In other words, retail establishments with multiple locations and recognizable appearance.

One factor that varies across jurisdictions is the numerical threshold for an establishment to qualify as a formula establishment. Some jurisdictions define Formula Establishments as an operation with 10 or more locations within the jurisdiction, within the United States, or in some instances, in the world. Many do not distinguish between restaurants and retail establishments. However, those jurisdictions that define Formula Restaurant Establishments typically establish the threshold at 3 or more locations within their jurisdiction.

The most commonly occurring types of regulation are as follows:

1. Regulations that prohibit Formula Retail Establishments.
2. Regulations that allow Formula Retail Establishments in the Downtown commercial areas.
3. Regulations that prohibit Formula Establishments in specific neighborhoods and allow them in central commercial or tourist areas.
4. Regulations that allow Formula Establishments through a conditional use or special permit that requires a public review.

The restrictions placed on conditional use permits can vary. For example, the restrictions can consist of any of the following:

1. Performance Based Guidelines
2. Limitation on street frontage allowed (i.e., 25 ft. of frontage)
3. Limitation on square footage per establishment (i.e. 2500 sq. ft.)
4. Limitation on percentage of ground floor (i.e. 30%)
5. Limitation on the concentration of similar uses in the area
6. Requirement of traffic studies

**a. City of San Francisco, CA**

The City of San Francisco defines Formula Retail Uses as “a type of retail sales activity or retail sales establishment which along with *eleven or more other retail establishments located in the World*”.

Purpose: an effort “to protect San Francisco’s vibrant small business sector and create a supportive environment for new small business innovations”

Regulations: Formula Retail Establishments are prohibited in nine of San Francisco’s Neighborhood Commercial Districts; allowed Downtown through a Conditional Use after complying with the Performance Based Design Guidelines.

Performance Based Guidelines review considerations include: 1. The percentage of the total linear street frontage within a 300- foot radius or a quarter of a mile radius, at the Planning Department's discretion, from the subject property that is occupied by Formula Retail and non-Formula Retail businesses. 2.The availability of other similar retail uses within the district and within the vicinity of the proposed project. 3. The compatibility of the proposed Formula Retail use with the existing architectural and aesthetic character of the district.

**b. Town of Palm Beach, FL**

The Town of Palm Beach definition of Formula Establishments only refers to Formula Restaurants and is defined as “a restaurant that is one of a chain or group *of three or more restaurants in the nation*”

Regulations: Not allowed in their commercial districts.

**c. Malibu, CA**

Purpose: “to promote and maintain a district community character and a diverse retail base. Encourage retail elements that promote variety while contributing to an maintaining the city’s small-town atmosphere and prevent the proliferation of businesses that create a homogenized retail experience”

Regulations: Permitted after obtaining a Formula Retail Clearance (FRC) permit. The ordinance established a maximum square footage to 2,500 square feet for formula retail businesses and limits such businesses to 30 percent if located in a shopping center.

The FRC for a formula retail business not located in a shopping center would be limited to 2,500 square feet. Additionally, it would require analysis to determine if another formula retail establishment was located within 500 feet of the proposed business, as measured from walls of the locations

#### **d. Nantucket, MA**

Purpose: “Create Formula Business Exclusion District (FBED) to address the advance impact of nationwide standardized businesses on Nantucket’s historic downtown area. The proliferation of formula businesses will have a negative impact on the island’s economy, historical relevance and unique character and economic viability”.

Regulations: Formula Business Establishments are prohibited in order to maintain a unique retail and dining experience.

#### **e. Dennis, MA**

Purpose: The purpose and intent of the Formula Based Business regulation is to address the adverse impact of nationwide, standardized businesses on Dennis villages, historic and residential areas as well as gateways to the town. The proliferation of formula-based businesses will have a negative impact on the town’s economy, historical relevance, unique character and economic vitality.

Regulations: Allowed in certain areas and only by Special Permit.

Needs to meet criteria such as; 1.not to alter the character of the Zone in a way which detracts from its uniqueness or contributes to a nationwide trend of standardized downtown offerings; 2. will complement those businesses already in the Zone, 3.will be operated in a non-obtrusive manner to preserve the community's character and ambiance, 4.There shall not be a substantial impact to the public safety from increased traffic. At the discretion of the Planning Board, the applicant may be required to submit a traffic study, prepared by a Registered Professional Engineer, approved by the board, maximize pedestrian and vehicular safety both on the site and accessing and egress and ingress.



**f. Jersey City, NJ**

**Purpose:** The proposed amendments will provide formula business restrictions to various downtown redevelopment plans. Formula business, which utilizes standardized features such as decor, menu or merchandise items, and logos, may detract from downtown Jersey City's unique community character. Restrictions on formula business should be implemented to preserve Downtown's distinctive sense of place and unique neighborhood character.

**Regulations:** Restrictions on formula business should be implemented to preserve Downtown's distinctive sense of place and unique neighborhood character in Downtown Redevelopment Areas. Formula Business Establishments, as defined by the Land Development Ordinance, are restricted to a maximum of 30% of ground floor gross leasable commercial area.

**g. Sausalito, CA**

**Purpose:** The purpose of the standards in this section regulate the location and operation of formula retail establishments in order to maintain the City's unique village character, the diversity and economic vitality of the community's commercial districts, and the quality of life of Sausalito residents; It is therefore the intention of the City that an over-concentration of formula retail businesses not be allowed, that all permitted formula retail establishments shall create a unique visual appearance that reflects and/or complements the distinctive and unique historical character of Sausalito, and that no such establishment shall project a visual appearance that is homogeneous with its establishments in other communities.

**Regulations:** A formula retail establishment may be allowed only in the central commercial, shopping center and neighborhood commercial districts and only with a conditional use permit.

**Needs to meet criteria** such as design review; be compatible with existing surrounding uses; preserve the community's distinctive character and ambiance; consistent with the unique historic character of Sausalito, and would preserve the distinctive visual appearance and shopping experience of Sausalito for its residents and visitors.

#### **h. San Juan Bautista, CA**

Purpose: The preservation of the existing character and scale of the city's commercial and historic districts is vital to the city's ability to attract tourism and ... is also important to maintain the distinctive small-town charm and character enjoyed by current residents." It also notes that a proliferation of formula businesses would threaten the economic vitality of the city's commercial districts, resulting in "a loss of employment opportunities for small business owners and employees who are residents."

Regulations: Formula Retail or Business Establishments are not allowed.

#### **i. York, ME**

Purpose: Amend the town's zoning ordinance to prohibit formula restaurants in order to protect the character and identity of the community and not create undue impacts in terms of noise, litter, traffic and other adverse impacts.

Regulations: Formula Restaurants Establishments are not allowed.

#### **j. Ojay, CA**

Purpose: The purpose of this section is to regulate the location and design of formula business establishments in order to maintain the tourist attracting small town character of the City, the diversity of the community's unique commercial areas and quality of life for visitors and residents.

Regulations: A formula business may be established on a site after obtaining a conditional use permit from the City.

Subject to these limitations:

No conditional use permit shall be issued for a use that is a formula business located within the area of the Downtown Commercial land use designation of the City's General Plan if either of the following are true: (i) such establishment has street-level frontage exceeding twenty-five (25) linear feet on any street, or (ii) the useable area of the building or structure wherein the formula business is to be

located exceeds two thousand (2,000) square feet. For purposes of this section, “street level frontage” shall include frontage on private parking lots and access ways where the commercial building does not abut a public street.

No permit application of any kind shall be accepted or processed for a formula business that also possesses at least two of the following characteristics:

- (i) Specializes in short order or quick service food and/or drink; (ii) Serves food and/or drink primarily in paper, plastic or other disposable containers; and
- (iii) Payment is made by customers before food and/or drink is consumed.

The Commission may promulgate regulations to further define the scope and meaning of the foregoing findings to ensure consistent implementation of this subsection.

## **V. Conclusion**

This document has reviewed the applicable provisions of the City of Miami Beach Comprehensive Plan and the City of Miami Beach Land Development Regulations. It has reviewed the potential impact upon the distinct developing character of the Sunset Harbour Neighborhood that the City of Miami Beach has invested in creating and reviewed the strategies used by other cities to regulate Formula Restaurants and Formula Commercial Establishments.

The City of Miami Beach has historically implemented regulations that promote and protect the character of its unique neighborhoods. Since 1989, the City has implemented twelve Overlay and Conservation Districts. Additionally, since 2009 the City has adopted regulations that limit, prohibit, or reduce the intensity of certain uses within the Sunset Harbour Neighborhood, in order to address concerns about incompatible uses that would affect the character and quality of life. The City has also provided incentives that would promote the “low scale, neighborhood friendly residential mixed use neighborhood”, “where people and commerce can exist side by side”; in order to establish uses that are compatible with the mixed-use residential character of the neighborhood and promote a “more pedestrian friendly neighborhood.”

The proposed Overlay District continues this pattern of legislation adopted in order to protect the unique neighborhoods of Miami Beach. It continues to promote the unique emerging character of the Sunset Harbour mixed-used neighborhood; and to provide economic vitality for hip businesses that will primarily serve the residents of the Sunset Harbour neighborhood.

The Vision Statement defines the City as “A unique and Historic Environment” and follows, as a guiding principle, the commitment to “Enhance Community Character”

The Sunset Harbour Mixed-Use Neighborhood Overlay District is supported by the Vision, Goals and Objectives of the Comprehensive Plan. It follows the City’s guiding principle and commitment to "encourage redevelopment by maximizing context sensitive design through appropriate architecture

compatible scale and pedestrian features".

The proposed Sunset Harbour Overlay District will continue to promote the hip and trendy character of this unique pedestrian-friendly neighborhood.

## **Appendix A. ART DECO/MIMO OVERLAY DISTRICT ORDINANCE AND MEA, INC. REPORT**