

**SUNSET HARBOUR MIXED-USE NEIGHBORHOOD OVERLAY DISTRICT
LDR AMENDMENTS**

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. 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 20th 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, country, or world;
- (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) Definitions. Notwithstanding the provisions of section 114-1, the following words, terms, and phrases, when used in this division, shall have the meanings ascribed to them in this section:
 - (1) 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.
 - (2) Formula commercial establishment means a commercial use, excluding office, restaurant, grocery store, fitness/health facility smaller than 5,000 square feet, and hotel, that has 100 or more retail sales establishments in operation or with approved development orders in the United States of America. 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 four 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:

- a. Standardized (formula) array of merchandise means that 50 percent or more of in-stock merchandise is from a single distributor and bears uniform markings.
 - b. 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.
 - c. 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.
 - d. 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.
 - e. 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.
 - f. Facade means a face (usually the front) of a building, including awnings, that looks onto a street or an open space.
 - g. 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.
- (3) Formula restaurant means a restaurant with 200 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 four (4) 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:

- a. 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.
- b. 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.
- c. 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.
- d. 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.
- e. 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.
- f. Facade means a face (usually the front) of a building, including awnings, that looks onto a street or an open space.
- g. 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.

(b) 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.

(c) Review procedures.

- (1) Commercial establishments in the Overlay District that are not identified in section 142-870.20(b) shall comply with the following regulations:

- a. A signed and notarized affidavit indicating that the establishment is not an establishment that is regulated by section 142-870.20(b) 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. Applicability.

The provisions of this Ordinance shall not apply to a business operator that (i) is operating lawfully; and (ii) has obtained a business tax receipt or a certificate of use on or before September 16, 2020. Any such business operator shall be deemed a "nonconforming use" as defined in City Code Section 114-1, and shall be subject to the provisions of Chapter 118 of the City Code, at Article IX, entitled "Nonconformances," except that such operator may physically expand its existing location or relocate to another property within the Neighborhood Center area of the Overlay District.

SECTION 7. Effective Date.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this _____ day of _____, 2020.

ATTEST:

Rafael E. Granado, City Clerk

First Reading: September 16, 2020

Second Reading: November 18, 2020

Verified by: _____
Thomas R. Mooney, AICP
Planning Director

Dan Gelber, Mayor

APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION



City Attorney NK Date 11/17/2020