

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: February 28, 2023

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB23-0576. Sunset Harbour – Perimeter Restaurant Ordinance.**

RECOMMENDATION

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

HISTORY

On September 14, 2022, at the request of Commissioner Ricky Arriola, the City Commission referred a discussion item (C4 Y) pertaining to outdoor restaurant seating above the ground floor in the Sunset Harbor neighborhood to the Land Use and Sustainability Committee (LUSC). On October 28, 2022, the LUSC discussed a proposed ordinance amendment and recommended (vote of 2-1) that the City Commission refer the proposal to the Planning Board for review and recommendation.

On December 14, 2022, the City Commission discussed the proposed referral to the Planning Board and continued the item to the February 1, 2023 City Commission meeting. Additionally, the City Commission requested that the Ordinance proposer continue outreach and discussions with the Sunset Harbor neighborhood. On February 1, 2023, the City Commission referred the proposed ordinance amendment to the Planning Board (Item C4 D).

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.**

Consistent – The proposed amendment does not create an isolated district unrelated to adjacent or nearby districts.

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

Consistent - The proposed ordinance does modify the scale of development, as such the amendment is not out of scale with the needs of the neighborhood or the city.

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 as the maximum floor area ratio (FAR) is not modified.

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 reasonable use of amenity decks 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 not adversely affect living conditions in the neighborhood, as it contains safeguards to ensure that residents are not negatively impacted.

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, as the FAR is not being modified by this ordinance.

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

Consistent – The proposed change will not affect light and air to adjacent areas.

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

Consistent – The proposed change will 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 will 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.

Partially Consistent – The proposal should not impact 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 is compatible with the City’s sea level rise mitigation and resiliency efforts.

ANALYSIS

Attached is a proposed ordinance amendment that would allow for expanded outdoor restaurant seating above the ground floor, in a limited area of the Sunset Harbor neighborhood. Currently, within the Sunset Harbor Neighborhood, outdoor restaurant seating above the first level of any building cannot exceed 40 seats and must cease operations no later than 8:00 pm. Additionally outdoor speakers for recorded, background level music is prohibited.

The proposal herein would amend Sec. 142-310 of the Land Development Regulations of the City Code (LDR’s) for properties in the Sunset Harbor neighborhood that front Alton Road and are located south of 18th Street, as follows:

- Additional above ground outdoor seating would be permitted, provided the total number of outdoor dining seats associated with the indoor restaurant above the ground floor does not exceed 100 seats.
- The total number of combined seats within the outdoor and indoor portions of restaurants above the ground floor shall not exceed 240 seats.
- Above ground outdoor seating would be permissible past 8:00 pm, but no later than 12:00 am.

Staff is supportive of the proposed revisions to the LDR's as the increase in the number of outdoor seats for restaurant use is not unreasonable given the location of the eligible properties adjacent to a major thoroughfare (Alton Road). Additionally, the eligible properties are located at the SE corner of the Sunset Harbor neighborhood, and well away from residential buildings.

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 Outdoor Restaurant Seating Amendment

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED "LAND DEVELOPMENT REGULATIONS," BY AMENDING CHAPTER 142 OF THE CITY CODE, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," DIVISION 5, ENTITLED "CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT," BY AMENDING SECTION 142-310, ENTITLED "SPECIAL REGULATIONS FOR ALCOHOL BEVERAGE ESTABLISHMENTS," TO ALLOW ADDITIONAL OUTDOOR SEATING FOR RESTAURANTS THAT FRONT ALTON ROAD AND ARE LOCATED SOUTH OF 18TH STREET, SUBJECT TO SPECIFIC CRITERIA; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach (the "City") has the authority to enact laws which promote the public health, safety, and general welfare of its citizens; and

WHEREAS, the Sunset Harbour neighborhood is composed of a mixture of residential, light industrial, and low intensity service, restaurants and retail uses, which serve the City and residents; and

WHEREAS, the Mayor and City Commission desire to encourage uses that are compatible with the scale and character of the neighborhood; and

WHEREAS, the City reviewed the condition of properties that front Alton Road and area south of 19th Street and the existing overall dining experiences; and

WHEREAS, the Sunset Harbour neighborhood has unique cultural, retail, and dining experiences that are vital to Miami Beach's local economy and must attract new, high-quality restaurateurs; and

WHEREAS, the City, with input of property owners and businesses, determined that the mitigation measures needed on outdoor dining are not applicable to the limited properties that front Alton Road, south of 19th Street; and

WHEREAS, the amendments set forth below provide additional seating capacity for quality restaurants and hours; and

WHEREAS, the amendments set forth below are necessary to accomplish the objectives above.

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

SECTION 1. Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 5, "CD-2 Commercial, Medium Intensity District," is hereby amended as follows:

CHAPTER 142 — ZONING DISTRICTS AND REGULATIONS
ARTICLE II. — DISTRICT REGULATIONS

* * *

DIVISION 5. — CD-2 COMMERCIAL MEDIUM INTENSITY DISTRICT*

* * *

Sec. 142-310. - Special regulations for alcohol beverage establishments.

* * *

(b) *Sunset Harbour neighborhood.* The following additional requirements shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located in the Sunset Harbour neighborhood, 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.

(1) Operations shall cease no later than 2:00 a.m., except that outdoor operations (including sidewalk cafe operations) shall cease no later than 12:00 a.m.

(2) Alcoholic beverage establishments may not operate any outside dining areas or accessory bar counters above the ground floor of the building in which they are located; however, outdoor restaurant seating, associated with indoor venues, not exceeding 40 seats, may be permitted above the ground floor until 8:00 p.m. Notwithstanding the foregoing, the provisions of this subsection (b)(2) shall not apply to the following:

a. As it pertains to outside dining areas only, but not outdoor bar counters, restaurants that front Alton Road and are south of 18th Street, provided the total number of outdoor dining seats located above the ground floor, which are associated with an indoor restaurant, shall not exceed 100 seats. Additionally, the total number of combined seats within the outdoor and indoor portions of restaurants above the ground floor shall not exceed 240 seats.

b. Any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that was issued prior to August 23, 2016, or to a proposed establishment that has submitted a completed application for an alcoholic beverage establishment to a land use board prior to August 23, 2016, or to an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired, prior to August 23, 2016.

(3) Except as may be required by any applicable fire prevention code or building code, outdoor speakers shall not be permitted. Notwithstanding the foregoing, the provisions of this subsection (b)(3) shall not apply to any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that was issued prior to August 23, 2016, or to a proposed establishment that has submitted a completed application for an alcoholic

beverage establishment to a land use board prior to August 23, 2016, or to an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired, prior to August 23, 2016.

- (4) Special events shall not be permitted in any alcoholic beverage establishment.

SECTION 2. CODIFICATION.

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

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4. SEVERABILITY.

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

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect 10 days after passage

PASSED AND ADOPTED this _____ day of 2023

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk.

APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION

City Attorney

Date

First Reading: March 27, 2023
Second Reading: April 28, 2023

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