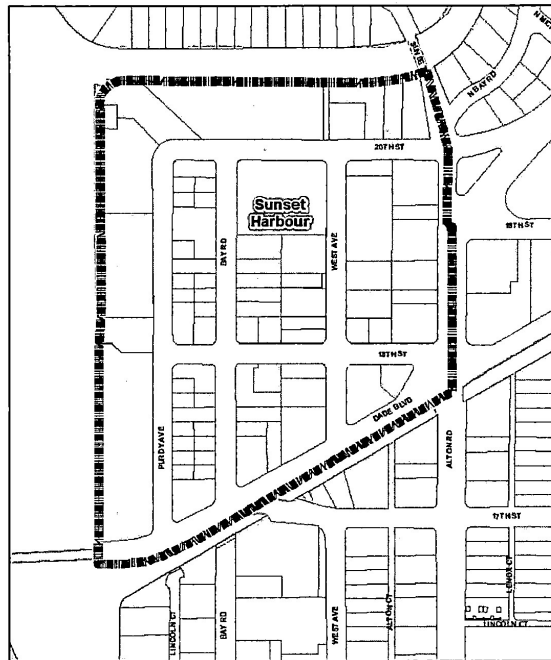


7.3.9 SUNSET HARBOUR MIXED-USE NEIGHBORHOOD OVERLAY DISTRICT¹

7.3.9.1 Location and purpose (Sunset Harbour Mixed-Use Neighborhood Overlay District).

- 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 (MAP EXHIBIT-1)



- b. The Sunset Harbour Mixed-Use Neighborhood Overlay District shall have two areas, as follows:
 - i. *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 (MAP EXHIBIT-2)
 - ii. *Neighborhood center.* The neighborhood center includes all properties that are not within the perimeter commercial corridors, as described above (MAP EXHIBIT-3).
- c. 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:
 - i. 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;
 - ii. 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;
 - iii. Formula commercial establishments and formula restaurants are increasing in number in mixed-use and commercial districts within the city;

- iv. 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";
- v. 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
- vi. 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
- vii. 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;
- viii. 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.

7.3.9.2 Compliance with regulations (Sunset Harbour Mixed-Use Neighborhood Overlay District).

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 1.2.2, the following words, terms, and phrases, when used in this division, shall have the meanings ascribed to them in this section:
 - i. *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 brands under its ownership umbrella and each branded store has ten locations, the term "establishment" would refer only to those stores that have the same name or brand.
 - ii. *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 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 (50%) 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 façade.
 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.
- iii. *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 or more of the following features: a standardized (formula) array of merchandise; a standardized facade; 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 (50%) 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.
 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 façade.
 6. *Façade* 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.

- b. *Limitations.* The following limitations shall apply to the commercial uses listed below:
 - i. Formula commercial establishments and formula restaurants shall be prohibited in the neighborhood center area of the overlay district.
- c. *Review procedures.*
 - i. Commercial establishments in the overlay district that are not identified in Section 7.3.9.2.b shall comply with the following regulations:
 - 1. A signed and notarized affidavit indicating that the establishment is not an establishment that is regulated by Section 7.3.9.2.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.
 - 2. 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.