

Miami 21 Zoning Reforms Respond to Market Headwinds to Shape Future Growth

2023 has been a big year for land use policy in Florida. Starting with the Florida Legislature's adoption of the Live Local Act (SB 102) in March 2023, the pace of change has continued in response to headwinds in the real estate market fueled by rising interest rates, insurance and construction costs – coupled with an affordable housing crisis and increasing focus on adaptation to climate change, which reared its head during this Summer's unprecedented heat wave.

The Housing Crisis continues to be a major focus. Recent data shows an outmigration pattern in Miami-Dade County fueled by rising housing costs and a lack of new housing supply. Nationally, advocacy group *Up for Growth* reports a 3.79 million unit deficit. Meanwhile, the cost to deliver new housing continues to increase – in part due to artificial barriers caused by restrictive zoning codes.

Not surprisingly, the City of Miami – South Florida's largest municipality – has been a hotbed for policy change. In 2023, the City has processed no less than 20 different text amendments to the Miami 21 Zoning Code in an effort to streamline the permitting process and respond to increasing efforts by state and county government to shake up the local regulatory framework through pre-emption of municipal zoning, namely by expansion of Miami-Dade County's Rapid Transit Zones and development rights afforded for mixed-income development under Florida's Live Local Act.

This Client Alert provides a synopsis of recent zoning reforms in City of Miami that may be of particular interest to developers, property owners and design professionals working on residential, office, and mixed-use projects in Miami's urban core.

I. **Waiver Reform Legislation.** On November 16, 2023, the City Commission passed on 2nd reading a series of ordinances presented under the framework of Miami 21 Waiver Reform Legislation. Following significant input from the Builders Association of South Florida, this package of text amendments aimed to reduce the number of waivers required for new construction projects in City of Miami, in part through converting code-required Waivers for commonly approved Waivers to by Right approvals.

Waivers being removed from Miami 21's ambit through these amendments include substitution of loading berths, vehicular access from a principal frontage for development sites with a single frontage, off-site parking within 1,000 feet and above-ground parking in the Second Layer on principal or secondary frontages. Projects can now utilize these form-based code provisions by Right.

// ***T6 Flexible Lot Coverage.*** The Waiver Reform Legislation also included zoning reforms tested with success in the Wynwood Neighborhood Revitalization District and Special Area Plans since Miami 21's adoption. One example is Flexible Lot Coverage – which previously only applied to mixed-use development within T5 zones in the NRD-1 – to increase lot coverage from 80% to 90% in exchange

for activated roof terraces at a 4:1 ratio to amount of increased lot coverage received. Through these amendments, T6 zones, not otherwise adjacent to T3 zones, can access additional lot coverage not to exceed 90%, by satisfying criteria requiring activated roof terrace of 4x the incremental lot coverage.

// Changes to 10% Waiver Standard. The 10% Waiver is an administrative tool fundamental to the form-based code, which has traditionally afforded developers a 10% deviation from certain specified zoning standards based on practical difficulty, with the exception of increases in Density, Intensity and Height. As part of the City's Waiver Reform Legislation, and prompted by a recent court decision determining the 10% waiver lacked sufficient clarity under the City of Tallahassee internal assessment, Article 7, Section 7.1.2.5.a.29 has been restructured – creating a *limited category* of 10% waivers for reductions in setbacks, minimum building separation above the 8th Story and lot coverage in a T3 zone; and a *general category* of 10% waivers permitted upon showing of "practical difficulty in complying with the strict requirements of this code". Concurrently, the list of prohibited 10% Waivers was expanded, to exclude waivers for reducing drive aisle dimensions, loading berth dimensions, and floorplate area and length, in addition to density, intensity, and height standards.

While most new construction projects in Miami still require one or more waivers as pre-requisites to securing a building permit, the nature and number of waivers has been reduced, and more projects may be able to proceed to building permit without the need to apply for waivers.

II. T5 Bonus Height for TOD Areas & Opportunity Zones. In November 2023, the City of Miami Commission adopted amendments to the City's Public Benefits Program, pursuant to Miami 21, Section 3.14.1, creating an additional three (3) stories of bonus height for T5 sites within TOD areas. This legislation was informed in many ways by the innovative T5 Zone performance standards created for the Wynwood NRD-1 in 2015. With the metrics established for each of the T5 bonus height options, the City is clearly moving in the direction of performance zoning to ensure something of value is being delivered back to the public and surrounding community when development is occurring.

// Bonus Height in TOD Areas. Except within NCD-1, NCD-2 and Single-Family Residential District of the Coconut Grove NCD-3, T5 properties within TOD Areas in Opportunity Zones meeting 1 or more of the following threshold standards are eligible to build up to eight (8) stories:

- a. T5-O site within a TOD not Abutting a T3 Transect Zone; or
- b. T5-O site within a TOD Abutting a T3 Transect Zone shall be by process of Exception with City Commission approval; or
- c. T5-O lots assembled and platted prior to Miami 21 that are more than 200,000 square feet shall be by process of Exception with City Commission approval; or
- d. T5 site that Abuts a D1 Transect Zone, except when Abutting a T3 Transect Zone.

Developers may qualify for additional bonus height by providing:

- a. Native Specimen Trees >25% above typical street tree standards required in Chapter 17
- b. Park improvements
- c. Pedestrian and mobility connections, and

- d. On-site mobility amenities (including a/c space, lockers, showers, bicycle repair stations, drinking fountains within mobility amenity space, and increased bicycle storage.

// Bonus Height in Opportunity Zones. Sponsored by District 5 Commissioner Christine King, the City Commission on December 14, 2023 approved on 1st reading legislation extending the T5 bonus height – up to eight (8) stories – to properties within a TOD Area or ¼ mile of a Transit Corridor located within a qualified Opportunity Zone census tract, which provide a minimum of 10% workforce housing (defined as affordable to households earning below 100% Area Median Income). Developers shall proffer a Declaration of Restrictive Covenants to be recorded on the property for a minimum thirty (30) years. Geographically, the City’s Opportunity Zones are most concentrated in the northern part of the City – in Allapattah, Little Haiti and Little River.

III. Green Roof Legislation. On December 14, 2023, the City Commission granted final approval to legislation, sponsored by former District 2 Commissioner Sabina Covo, promoting green roofs in T5 and T6 zones, modernize rooftop projection standards (including additional height for parapet walls, trellises, stair/elevator enclosures, etc,) and to facilitate more activated roof tops. In exchange for permanent installed green roofs and corresponding reduction in heat island effect, Miami 21 now allows for projects to expand enclosed habitable space up to 40% of the roof area.

These amendments to Miami 21 apply citywide in T5 and T6 zones, plus applicability to the Wynwood NRD-1 and Wynwood Norte NRD-2 overlay districts. Within the NRD-1 boundaries, rooftop enclosures up to 40% of roof area may be achieved in exchange for (i) an equivalent green roof treatment, or (ii) elevated publicly visible art treatment with approval by the Wynwood Design Review Committee.

The legislation was vetted over the past 12 months through and supported by the City’s Climate Resilience Committee, the Wynwood Business Improvement District and the Planning, Zoning and Appeals Board, and generated support from diverse stakeholders – highlighting the increased awareness and interest in solutions for combatting the effect of global warming and sea level rise.

IV. NRD-1 Cleanup Amendments. On December 14, 2023, the City Commission also approved legislation, sponsored by District 5 Commissioner Christine King, with amendments updating standards in the Wynwood Arts District (NRD-1), Appendix J of Miami 21, to bring the City’s first NRD-1 (adopted in 2015) up to speed with changing market conditions and address inconsistent interpretations to ensure Wynwood’s continued revitalization.

Two key changes include expanding the applicability of bicycle parking substitution for vehicular spaces (up to 20% of required parking) for properties along the Wynwood bike lane network and properties within Transit Corridors. Additionally, “Hotel” was added as a permitted use in the D1 industrial zone west of NW 5th Avenue – recognizing the synergies between office and hotel, particularly as Wynwood evolves into one of Miami’s budding technology districts – attracting companies like Spotify and Founders Fund in recent years.

V. **Conclusion.** Recent zoning reforms to the Miami 21 Code reiterate the pace of change happening throughout the regulatory environment. Coupled with significant policy changes happening at the State and Local levels, it is more important than ever to be informed of how these changes may impact real estate development and projects in the pipeline.

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Wernick & Co, PLLC brings you this client alert as part of our efforts to stay on top of legal developments in these times of unprecedented change.



If we can be of assistance or you would like more information about the legislation discussed in this client alert above, please feel free to contact us.



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