

# Akerman Practice Update

LAND USE AND SUSTAINABLE DEVELOPMENT

October 2009

## First Major U.S. City to Adopt Form-Based Zoning Code

**Neisen O. Kasdin**  
[neisen.kasdin@akerman.com](mailto:neisen.kasdin@akerman.com)

**Andrew W. Frey**  
[andrew.frey@akerman.com](mailto:andrew.frey@akerman.com)

DALLAS  
DENVER  
FT. LAUDERDALE  
JACKSONVILLE  
LOS ANGELES  
MADISON  
MIAMI  
NEW YORK  
ORLANDO  
TALLAHASSEE  
TAMPA  
TYSONS CORNER  
WASHINGTON, D.C.  
WEST PALM BEACH

[akerman.com](http://akerman.com)

The City of Miami has adopted a new zoning code known as Miami 21, which is based on the urban planning principles of Smart Growth and New Urbanism. Codes such as Miami 21 are referred to as “form-based” zoning codes because they primarily regulate the shape of buildings and allow a mix of uses, unlike most traditional zoning codes which regulate by separating uses.

By placing the emphasis on the shape and design of buildings rather than separating uses, form-based codes encourage compatibility by promoting better transitions between high- and low-rise areas, and encourage walking by promoting more uses on the ground floor of buildings, more streetscape requirements such as shade trees, and more uses within walking distance of each neighborhood.

While such codes are a national trend – they have been adopted for many neighborhood master plans, greenfield developments, urban redevelopment areas, and smaller cities – Miami 21 is the first time a form-based code has been adopted for an entire major U.S. city. More large cities across the U.S., such as Denver and Philadelphia, are considering adopting form-based codes.

Because of this emerging trend, it is important that any entity engaged in real estate development be familiar with the concepts underlying form-based codes.



## Organization of Form-Based Codes

In addition to the substantive differences between form-based codes and contemporary zoning codes, there are significant organizational differences as well - most notably, ease of use and predictability. Form-based codes typically share the same format: Definitions, Atlas, Building Form Standards, and Public Space/ Street Standards. A property owner determines which zoning regulations apply to a parcel by locating the parcel on the zoning atlas, determining which zone applies to the parcel and reviewing the general and specific regulations applicable to that particular zone.

In contrast to traditional codes which often include decades worth of overlay districts and hidden exceptions, Miami 21 provides four primary zones (T3 through T6) and three use categories (Restricted, Limited, and Open). T6 districts are further clarified by different height maxima (measured in stories, not feet), resulting in zoning districts such as "T6-12 O," indicating a 12 story height limit and Open uses. Miami 21 also includes "D" districts to preserve industrial uses, "CI" districts to accommodate civic institutions, and allows "special area plans" to tailor zoning for large assemblies.

## Compatibility is the Key

A basic principle of form-based codes is that a gradual transition from wilderness to urban core (known as the "transect") should guide the intensity of buildings. For example, multi-story towers should not be placed next to

"Miami 21 is the first time a form-based code has been adopted for an entire major U.S. city."

single-family homes. Traditional codes often permit abrupt changes of scale because of their primary focus on separating uses.

This emphasis on gradual transition applies not only to the original zoning atlas, but also to future zoning amendments. Form-based codes provide that an area may be re-zoned only to the next more intense district, and only if abutting such a more intense district. This approach is known as "successional" zoning, and is designed to prevent "leap frog" zoning, overlay districts, and hidden exceptions.

Such predictability, coupled with the simplicity of zoning districts, is a benefit to both residents and developers. Predictability discourages speculative land prices and manages expectations of residents, theoretically resulting in more stable property values and less opposition to projects.

Close examination of the Miami 21 zoning map reveals a corollary to the transect: that the gradual transition should occur along certain corridors, and that, in addition to the urban core, a metropolitan area may have several sub-cores, or nodes. Such corridors and nodes preserve the residential neighborhoods between

them, support public transportation, and increase economic opportunity by locating more jobs and retail along convenient transit routes.

## Pedestrian as First Priority

Another principle of form-based codes is the notion that pedestrians should come first. While traditional codes ignore pedestrian comfort, and thus encourage car use and greenhouse gas production, form-based codes promote pedestrian activity in three primary ways: 1) detailed activation requirements for lower floors of buildings, 2) increased streetscape requirements, and 3) mixing uses to locate more within walking distance.

### Activation Of Lower Floors

Miami 21, and form-based codes in general, encourage active uses on the ground floor of every large urban building, discourage extensive blank walls, encourage frequent doors and windows, and require concealing parking behind screens or active spaces.

### Increased Streetscape Requirements

While most streetscape improvements occur in the public right-of-way, Miami 21 requires developers to implement certain elements of pedestrian-friendly streetscapes, such as wider sidewalks and shade trees.

### Greater Mix Of Uses

Land use and transportation are inextricable. Miami 21 allows a wider mix of uses in high-density areas, thus promoting pedestrian accessibility and reducing the need for automobile trips. Mixing uses in many areas of a city creates continuous pedestrian activity, safety, and convenience, and may increase rents.

“Miami 21’s increased design requirements, such as screened parking and additional setbacks above lower floors, may effectively reduce development rights.”

### Re-Zoning Risks

In spite of the many purported benefits of form-based codes, there are risks associated with large scale re-zoning efforts.

### Loss Of Development Rights

Although in many instances the City attempted to maintain the same pre- and post-Miami 21 development intensity, certain areas of the City were explicitly down-zoned. Even when no explicit intensity reductions were made, Miami 21’s increased design requirements, such as screened parking and additional setbacks above lower floors, may effectively reduce development rights.

### Public Benefits Program

In many cases Miami 21 establishes a lower development intensity, and requires developers to make monetary or in-kind contributions to achieve the pre-Miami 21 development intensity. Otherwise known as Miami 21’s “public benefits program,” this contemplates developer contributions for affordable housing, brownfield remediation, civic facilities (schools, police stations, hospitals, infrastructure), green building, parks, and historic preservation.

### Vague Provisions and Unfamiliarity

Because form-based codes are generally uncommon, the language of such codes is unfamiliar, the procedures established may be missing details or contingencies, and city planning staff may be unfamiliar with the new vocabulary.

### Developer Zoning Rights

Because form-based codes are firmly founded on the idea of the transect and successional zoning, they limit the ability of developers to achieve dramatic increases in zoning rights after acquiring a property. However, Miami 21 does authorize “special area plans”, which allow developers of large assemblies to exceed the underlying zoning intensity as long as the principles of Smart Growth and New Urbanism are maintained.

With one of the top 5 legal teams in the U.S. in number of LEED accredited lawyers (Green Building Certification Institute), Akerman provides counsel on the land use and sustainability issues impacting real estate and infrastructure projects. Our lawyers are well-versed in the principles of Smart Growth and New Urbanism, including Miami 21. We can assist clients whose property may be subject to a proposed form-based code or advise governments seeking to draft and implement practical form-based codes.

Neisen Kasdin is the Chair of Akerman’s Land Use and Entitlements practice. He was instrumental in the revitalization of South Beach through his service as Chair of the Community Development Corporation for South Beach and as a City Commissioner and Mayor of Miami Beach. He currently serves as Vice Chair of the Board of Directors for the Miami Downtown Development Authority.

Andrew Frey is a land use attorney in the firm’s Miami office. He has experience working on a range of land use, due diligence, and real estate development projects with a focus on urban infill, adaptive reuse, and historic preservation matters

Akerman is ranked among the top 100 law firms in the U.S. by *The National Law Journal NLJ 250* (2008) in number of lawyers and is the largest firm in Florida. With more than 500 lawyers and government affairs professionals, we serve clients from major business centers in Florida, New York, Washington, D.C., California, Virginia, Colorado, and Texas.

For more information, please contact a member of our Land Use or Sustainable Development practice.

**Ft. Lauderdale**

**Edwin J. Stacker**

Las Olas Centre II  
350 East Las Olas Boulevard, Suite 1600  
Ft. Lauderdale, FL 33301-2229  
954.463.2700

**Jacksonville**

**Robert A. Leapley, Jr.**

50 North Laura Street, Suite 2500  
Jacksonville, FL 32202-3646  
904.798.3700

**Los Angeles**

**Allan N. Lowy**

725 South Figueroa Street, 38th Floor  
Los Angeles, CA 90017-5438  
213.688.9500

**Madison**

**Robert J. Smith**

222 West Washington Avenue, Suite 380  
Madison, WI 53703  
608.257.5335

**Miami**

**Neisen O. Kasdin**

One Southeast Third Avenue, 25th Floor  
Miami, FL 33131-1714  
305.374.5600

**New York**

**Howard A. Zipser**

335 Madison Avenue, Suite 2600  
New York, NY 10017-4636  
212.880.3800

**Orlando**

**Cecelia Bonifay**

CNL Center II at City Commons  
420 South Orange Avenue, Suite 1200  
Orlando, FL 32801-3336  
407.423.4000

**Tallahassee**

**Silvia M. Alderman**

Highpoint Center, 12th Floor  
106 East College Avenue  
Tallahassee, FL 32301  
850.224.9634

**Tampa**

**Aileen S. Davis**

SunTrust Financial Centre  
401 East Jackson Street, Suite 1700  
Tampa, FL 33602-5250  
813.223.7333

**Tysons Corner**

**Jeffrey G. Gilmore**

8100 Boone Boulevard, Suite 700  
Vienna, VA 22182-2683  
703.790.8750

**Washington, D.C.**

**Robert M. Andersen**

801 Pennsylvania Avenue N.W., Suite 600  
Washington, DC 20004  
202.393.6222

**West Palm Beach**

**Thomas E. Streit**

Esperante Building  
222 Lakeview Avenue, Suite 400  
West Palm Beach, FL 33401-6183  
561.653.5000

[akerman.com](http://akerman.com)

