

COMMITTEE MEMORANDUM

TO: Land Use and Sustainability Committee Members

FROM: Eric Carpenter, City Manager

DATE: November 5, 2024

TITLE: DISCUSS THE CREATION OF A TRANSFER OF DEVELOPMENT RIGHTS (TDR) PROGRAM FOR WASHINGTON AVENUE.

RECOMMENDATION

The Administration recommends that the Land Use and Sustainability Committee (LUSC) discuss and continue the item to the January 2025 LUSC meeting with direction for staff to draft an ordinance modifying Chapter 2, Article XIV of the LDRs, to create a TDR program.

BACKGROUND/HISTORY

On June 26, 2024, at the request of Commissioner Alex Fernandez, the Mayor and City Commission (City Commission) referred the item (C4 Y) to the LUSC.

ANALYSIS

As noted in the attached referral memorandum, the item sponsor has requested that the LUSC discuss creating a Transfer of Development Rights (TDR) program for Washington Avenue, which would allow available intensity (floor area ratio / FAR) and density (residential units per acre of land) to be moved within the Washington Avenue corridor. TDR is a mechanism whereby property owners in a sending district can sell or transfer unused development rights, such as FAR and/or density, to a receiving district where there is additional demand to develop.

Although the sale or transfer of development rights is typically a private transaction, such programs usually require that a specific public benefit be provided to transfer the development rights. The public benefits can consist of a wide range of options such as improvements to public infrastructure, transit, housing, historic preservation, or environmental and sustainability efforts.

When the current updates to the Land Development Regulations of the City Code (LDRs) were adopted in 2023, Chapter 2, Article XIV was created, in anticipation of a future TDR program within the City of Miami Beach. This section of the code is currently a place holder, and implementing legislation is needed to establish sending (transfer) districts and receiving districts, as well as provide an applicable framework, including all necessary safeguards, to ensure that the City and resident goals are carried out.

The proposal herein pertains to a potential TDR program specific to Washington Avenue. Such program could be used to incentivize the long-term resiliency of historic buildings, as well as non-transient residential uses, while at the same time encouraging new resilient development that achieves other goals.

The proposed TDR program could be predicated on the following:

1. A binding agreement to retain, preserve, restore, and enhance the resiliency of the existing

structure on the proposed sending site; and

2. A binding agreement that the receiving site would meet specified development benchmarks related to use, height, distribution of volume, and a cap on the total amount of development rights that could be received.

As an additional safeguard, approval by the Historic Preservation Board (HPB) could be required through a Certificate of Eligibility process for property owners to avail themselves of the ability to sell unused floor area that may be located within a local historic district. Through this process, the HPB would be expected to place conditions to ensure that the building is restored in an appropriate and timely fashion, is well maintained in perpetuity, and is made resilient. Prior to allowing for the transfer of unused development rights to take place, City staff could ensure that the applicant has complied with all conditions of the Certificate of Eligibility through a Certificate of Transfer process.

As part of a TDR proposal, receiving districts would be established that contain zoning and land use criteria that eligible properties would have to comply with. The regulations would include outside limits on how much FAR can be received by an individual property, as well as height limits, and potential restrictions on uses. Additionally, requirements for providing other public benefits could be incorporated, such as requiring workforce or affordable housing, development of infrastructure, or resiliency enhancements. However, it is important that such requirements do not limit the economic viability of development if it is to be successful.

Although a TDR program would have the benefit of not resulting in an overall increase in allowable intensity within the identified TDR area, one challenge to implementing a TDR program is that it can be burdensome to manage. Limitations and challenges sending property owners may encounter could discourage them from selling their surplus development rights. Additionally, since some properties are close to being built out in historic districts, they often have minimal or no additional development capacity remaining. Finally, the cost of unused development rights set by a property owner(s) in an eligible sending district could be much higher than what property owners in a receiving district are willing to pay.

Collectively, all these challenges could limit receiving district property owners' ability to accumulate sufficient floor area to make its use worthwhile. Additionally, it may require that they purchase development rights from multiple property owners in sending districts, which could further complicate the program's use.

TDR programs have been considered by the City a few times over the last several years with areas of discussion including the Washington Avenue corridor and the North Beach Town Center. However, a TDR proposal for these areas never moved forward. In the case of the North Beach Town Center, the lack of surplus development capacity on the properties in the potential sending district was seen as a hindrance to the usefulness of such a program.

The City of Miami Zoning Ordinance has a TDR program that has overcome a similar limitation. In Miami's program, property owners in historic districts were provided with significant additional development rights that were generally not usable on their properties, due to lower height limits and other regulatory constraints on the sites. Those additional unusable development rights were sold to properties in certain higher intensity commercial districts seeking additional height and floor area. Given that a receiving site only needs to purchase development capacity from one or two properties, the program has seen a fair amount of use.

The City of Miami regulations also have a provision that allows the City to sell additional development capacity, which essentially ensures that the price of a TDR will likely not exceed the cost of purchasing the development capacity from the City. However, this provision does have the effect of increasing the overall development capacity of the City.

Potential Sending Areas

The Administration would initially suggest the designation of non-single-family historic districts and sites that have a high degree of architectural significance, as well as those areas most vulnerable to the impacts of sea level rise, as sending districts. Areas meeting this criteria include:

- Flamingo Park Historic District.
- Ocean Beach Historic District.
- MXE Zoned Properties on Ocean Drive and Collins Avenue

Potential Receiving Areas

In addition to the Washington Avenue corridor, the Administration would suggest exploring the designation of other high and medium density multifamily and commercial areas as receiving districts. Potential additional areas that could be considered are the following:

- Fifth Street corridor.
- Alton Road corridor.

The above areas are also highly attractive as future transit-oriented development (TOD) zones.

If there is consensus to modify Chapter 2, Article XIV of the LDRs, to create a TDR program, a draft ordinance can be brought back to the LUSC at a future meeting. Moving forward, any proposed amendment would require a separate referral by the City Commission to the Planning Board.

FISCAL IMPACT STATEMENT

No Fiscal Impact

Does this Ordinance require a Business Impact Estimate?

(FOR ORDINANCES ONLY)

The Business Impact Estimate (BIE) was published on .

See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notices/>

FINANCIAL INFORMATION

N/A

CONCLUSION

The Administration recommends that the LUSC discuss and continue the item to the January 2025 LUSC meeting, with direction for staff to draft an ordinance modifying Chapter 2, Article XIV of the LDRs, to create a TDR program.

Applicable Area

Citywide

**Is this a “Residents Right to Know” item,
pursuant to City Code Section 2-17?**

Yes

**Is this item related to a G.O. Bond
Project?**

No

**Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481,
includes a principal engaged in lobbying?** No

If so, specify the name of lobbyist(s) and principal(s):

Department

Planning

Sponsor(s)

Commissioner Alex Fernandez

Co-sponsor(s)

Condensed Title

Discuss The Creation Of A Transfer Of Development Rights (TDR) Program For Washington Avenue.