

COMMITTEE MEMORANDUM

TO: Land Use and Sustainability Committee Members
FROM: Eric Carpenter, City Manager
DATE: March 11, 2025
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) direct the Administration to prepare a professional market study to inform the details of a Transfer of Development Rights (TDR) program and continue the item to a future date to further develop a TDR program based on the results of the market study.

BACKGROUND/HISTORY

On June 26, 2024, at the request of Commissioner Alex Fernandez, the Mayor and City Commission (City Commission) referred a discussion pertaining to the creation of a TDR program for Washington Avenue (C4 Y) to the LUSC. On November 5, 2024, the LUSC discussed and continued the item to the January 16, 2025, meeting with direction to the administration to develop a more detailed structure for a possible TDR program, including other potential receiving areas and a sunset provision.

On January 16, 2025, the item was deferred to a future meeting, with no discussion.

ANALYSIS

As noted in the attached referral memorandum, the item sponsor has requested that the LUSC discuss creating a 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 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.

MARCH 11, 2025 LUSC UPDATE

At the November 5, 2024 meeting, the LUSC requested that the Administration develop a more specific structure for a TDR program that could be tailored as a pilot program with a sunset provision and limited sending and receiving areas. After extensive research of similar programs throughout the country, the Administration believes that the program developed for the Miami Modern (MiMo)/Biscayne Boulevard historic district in the City of Miami would serve as the best model for implementation. Section 23-6 of the City of Miami Code outlining their process is attached to this memorandum.

For a TDR program to be successful, there will need to be sufficient interest among both buyers and sellers of development rights. This will be largely dependent on a strong demand within receiving areas for additional development rights, as well as market conditions that make selling development rights profitable within sending areas.

The most effective way to evaluate the market potential of a TDR program is to conduct a formal study of market conditions. This type of study would examine property values and sale prices within both sending and receiving areas to estimate the value of development rights. Such a study would need to be performed by an experienced, qualified professional. Depending on the cost, it is anticipated that the Planning Department's current fiscal year budget could likely fund such study.

Assuming there is sufficient market potential for a TDR program to be successful, a more detailed program could be structured in accordance with the following:

Sending Area

One potential sending area is the low-density residential neighborhood of Flamingo Park generally bounded by Lincoln Lane South on the north, 5th Street on the south, Pennsylvania Avenue on east and Lenox Avenue on the west. This particular area is located within the RM-1 zoning district and the Flamingo Park Historic District and contains approximately 600 contributing buildings. This neighborhood has a maximum permitted FAR of 1.25 and a maximum permitted building height of 35'-0". Eligible buildings could include any building classified as contributing within the district.

Receiving Area

Receiving areas could be explored within the proposed boundaries of the residential use incentives ordinances, currently under consideration by the Planning Board, which are the areas along Washington Avenue, Lincoln Road and 17th Street. Consistency with the requirements for the residential use incentives could be a requirement for eligibility.

Allocation and Exchange Rates

The allocation rate for TDR sending areas is the amount of development rights that can be sold per property. The simplest program design would have an allocation equal to the amount of unused development rights. In the event the Flamingo Park RM-1 area is selected as the selling district, this may not be as effective due to the limited amount of development rights remaining on a substantial number of properties. To better incentivize property owner participation, the Administration would recommend a greater allocation rate for Flamingo Park. This could include a provision similar to the City of Miami's TDR allocation which allows for the sale up to 225 percent per square foot of FAR remaining unused on a property.

The exchange rate is the relationship between the number of development rights on a sending site and the amount of bonus development intensity on a receiving site. Similar to the allocation rate, the simplest formula is to allow a one to one exchange rate, meaning that receiving site bonus equals the amount of square footage available to sell. However, market conditions may justify a higher exchange rate to incentivize purchases. The exact percentage of transferable development rights will need additional study and should be informed by the outcome of a formal market study.

Transfer Procedures

There are two different types of TDR programs, those with concurrency requirements and those that treat TDRs as commodities. Concurrency requirements are rules built into the design of the TDR program and its ordinances that force the sale of TDRs to occur at the same time as the application for the receiving site project. A developer seeking to use TDRs to build additional floor area, for example, would be required to find a willing sender at the same time the new development is approved. This may create a significant challenge for the developer as a seller would need to be identified at precisely the right time.

TDRs may also be treated as commodities, meaning they can be purchased by anyone, and bought, sold, or even held freely. This model alleviates timing concerns, favors the developer's schedule, and permits the operation of TDR banks. TDR banks facilitate the purchase and sale of TDRs. The banks are typically nonprofit institutions supported by revolving funds and donor, or a local government.

While the transfer of development rights is primarily a private transaction, to ensure the City's goals are met, a reasonable amount of review and oversight by the City will be required. The Administration recommends a formal review and approval process by the Historic Preservation Board (HPB) to determine if a property located within a sending area is eligible for the program. The Administration would also recommend a process similar to the City of Miami's program which would require the HPB issue a certificate of eligibility for qualifying properties.

Protection

To ensure that historic resources are preserved for the public benefit, public welfare, conservation, and aesthetics, the Administration recommends that all properties participating in the program be required to use the TDR for capital improvements on the sending property. The quantity of TDR value available for sale could be tied to the value set out in the building permit application for large scale work or a signed contract for smaller scale improvements at a specified ratio. Additionally, the City could require a restrictive covenant to ensure ongoing maintenance of the property.

Future Infrastructure Capacity

To ensure that any future increase in development rights through a TDR program will not overburden existing infrastructure, additional analysis may be required regarding levels of service for water and sewer, storm water capacity, parks and open space, and transportation. Any upgrades needed to address deficiencies in level of service in these areas would need to be part of a TDR agreement.

FISCAL IMPACT STATEMENT

If direction is provided to initiate a market study, as detailed in the memorandum, the total cost of the study may be able to be accommodated within the existing budget. However, if the cost exceeds what is available in the budget, a budget enhancement may be required.

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

Not Applicable

CONCLUSION

The Administration recommends that the LUSC direct the Administration to prepare a professional market study to inform the details of a Transfer of Development Rights (TDR) program and continue the item to a future date to further develop a TDR program based on the results of the market study.

Applicable Area

South Beach

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