
Sec. 23-6. Transfer of development rights and density for historic resources; provision for a determination of eligibility process, and special provisions for resources within the Miami Modern (MiMo)/Biscayne Boulevard Historic District; prohibiting certain uses; and establishing a 35-foot height limit.

It is the intent of this section to encourage the preservation of historic resources by creating a process whereby the otherwise unusable development and density rights for historic resources may be converted into an asset that may be sold to a receiving site. Receiving sites for unused development rights will be located within a T-6 transect, where a public benefits bonus may be used. Receiving sites for unused development density will be located near a Transit Oriented Development ("TOD") pursuant to Article 4 of Miami 21, the zoning ordinance of the City of Miami, Florida, as amended or superseded. Publicly owned sending properties may transfer density at a discounted rate for use as affordable housing. Owners of eligible properties shall be issued a "certificate of eligibility" following confirmation that the property meets the criteria established in subsection (1) or has been determined eligible under the process described in subsection (3).

(1) *Eligible properties (sending sites).*

- a. Under the TDR and TDD provisions described in this section, a property owner is automatically eligible to apply to sell their unused development rights if the property is located in a T3-O transect zone or higher, and is classified as one or more of the following:
 1. Individually listed in the national register of historic places;
 2. Listed as a contributing property within a national register district;
 3. Individually listed in the Miami register of historic places under the provisions of section 23-4;
 4. Listed as a contributing property within a local historic district under the provisions of section 23-4;
 5. Listed as a thematically-related historic resource within a multiple property designation under the provisions of section 23-4 of the City Code.
 6. Qualified as an "eligible historic resource," after having met the criteria for eligibility set forth in subsection (3), and so determined by the HEPB.
 7. Otherwise qualifies as a historic resource, but that has lost its historic integrity because of major alterations and/or additions; provided that it can be shown to the HEPB that:
 - A. The building's original appearance can be documented;
 - B. The owner applies for and receives a special certificate of appropriateness, detailing the steps to be taken to restore the original appearance of the building;
 - C. The owner substantially completes the proposed restoration activity before an application for transfer of development rights is submitted.
 8. A multi-family residential structure in a T4-R transect, shall be eligible for the TDR and TDD programs, only in the event it is:
 - A. Individually listed in the national register of historic places; and/or
 - B. Individually listed in the Miami register of historic places.

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- C. Qualified as an "eligible historic resource" by the HEPB after having met the criteria for eligibility set forth in subsection (3), for an individually significant resource.

For those individual buildings that are locally designated historic resources on the Miami register of historic places and deemed eligible by the preservation officer to participate in the transfer of development rights or density ("TDR or TDD") programs under the terms of section 23-6, the zoning administrator or his/her designee shall calculate the unused development potential (base development rights) that may be transferred to a receiving property at 225 percent per square foot of the available square feet permitted by the underlying transect zone. The zoning administrator or designee shall also calculate the unused density potential that may be transferred to a receiving site rounding up to the nearest hundredth, thereby recognizing the significance of Miami's locally designated historic resources and the additional requirements associated with the rehabilitation of a historic property.

- 9. A contributing or non-contributing resource contained within the boundaries of the Miami Modern (MiMo)/Biscayne Boulevard Historic District shall be eligible for the TDR and TDD incentive as further described in subsection (2).
- (2) *Miami Modern (MiMo)/Biscayne Boulevard historic district.* On June 6, 2006, the HEPB designated that portion of Biscayne Boulevard from NE 50th Street on the South to NE 77th Street on the north, as a historic district. Historically, Biscayne Boulevard was a premier shopping destination, and later the principal corridor leading tourists to the spectacular attractions in the Miami area.

As the MiMo/Biscayne Boulevard historic district is the only overwhelmingly commercial historic district in the city that has been listed in the Miami register of historic places, it is deemed deserving of special considerations not applicable to the residential historic districts.

Over the years, inappropriate infill construction changed the character of Biscayne Boulevard, resulting in a less-than-cohesive character. It is the desire of the city to encourage new construction and improvements or remodelings to existing structures so that they either return to the classic types prevalent during the historic periods of significance, or represent an improvement that maintains the high standards of appearance for the entire historic district, as determined by the HEPB.

Further, the TDR and TDD incentives shall be available to the structures judged as non-contributing only in the MiMo/Biscayne Boulevard historic district and only when the proposed work will bring the property closer to becoming a contributing structure as determined by the HEPB. The incentive for non-contributing buildings is intended to promote reinvestments within the overall area encompassed by the historic district leading to its betterment.

- a. *Permitted uses.* In a further effort to maintain a balance of retail, entertainment, lodging and services uses, any commercial, civic, civil support, and educational use within the MiMo Biscayne historic district shall be limited to only those permitted under the T4-O transect zone.
- b. *Calculations of available development rights and development density (sending property) for the MiMo (Miami Modern)/Biscayne Boulevard Historic District.*
 - 1. For those contributing properties contained within the Miami Modern (MiMo)/Biscayne Boulevard Historic District deemed eligible by the preservation officer to participate in the TDR and TDD programs under the terms of section 23-6, the zoning administrator or their designee shall calculate the unused development potential (base development rights) that may be transferred to a receiving property at 225 percent per square foot of the available square feet permitted by the underlying transect. The zoning administrator or designee shall also calculate the unused density potential that may be transferred to a receiving site

rounding to the nearest hundredth unit, thereby recognizing the additional requirements associated with the rehabilitation of a historic property. Notwithstanding these calculations, based on the allowable development rights prescribed by the Miami 21 Code transects for this historic district, no building or structure contained within the boundaries of the Miami Modern (MIMO)/Biscayne Boulevard historic district shall exceed 35 feet in height. Buildings existing at the time of passage of the ordinance from which this section derives shall be grandfathered and allowed to remain.

2. For those non-contributing properties contained within the Miami Modern (MiMo)/Biscayne Boulevard Historic District as described in section 23-6, the zoning administrator or their designee shall calculate the base unused development rights at 175 percent per square foot of the total available square feet permitted by the underlying transect which shall be available for transfer (sale). The lot itself may be developed at 100 percent of its capacity under the requirements of the historic district guidelines, and the Miami 21 Code. Notwithstanding these calculations, based on the allowable development rights prescribed by the Miami 21 Code transects for this historic district, no building or structure contained within the boundaries of the Miami Modern (MIMO)/Biscayne Boulevard historic district shall exceed 35 feet in height. Buildings existing at the time of passage of the ordinance from which section derives shall be grandfathered and allowed to remain.

(3) *Standards for the improvements to non-contributing structures.* When improvements to non-contributing buildings are made, the following guidelines shall be implemented:

- a. Use of building materials commonly found in the construction of the "contributing" structures within the historic district;
- b. Installation of signage that is in keeping with the periods of significance represented in the district (1924-1956);
- c. Architectural design that complements the historic building types and vocabulary which include:
 - i. Mediterranean Revival;
 - ii. Art Moderne;
 - iii. Art Deco;
 - iv. Miami Modern (MiMo);
 - v. South Florida Regional Vernacular, e.g. a style or type of building that represents the local or indigenous adaptations of design resultant from the climate, traditions, and available building materials in the region.

Nothing in these standards shall be construed to encourage a false sense of historical appearance. Replications or reconstructions shall be permitted only as specifically allowed by the HEPB, and under the provisions of subsection (1)a.6.

(4) *Qualification as an eligible historic resource—Requirements and certification process.* A property may be determined eligible for local historic designation in order receive a "certificate of eligibility," and therefore take advantage of the transfer of development rights and density provisions, provided that the building meets certain eligibility criteria; and that a formal application for local historic designation is submitted to the planning department within one year from the date the eligibility application is approved by the historic and environmental preservation board. The time period may be extended by HEPB. If the application is not received within one year of the period of extension, the "certificate of eligibility" will be withdrawn. If sale of development rights or density has taken place without designation, proceeds must be paid to the city for the historic preservation trust fund. If proceeds are

not paid to the city, a lien on the property equal in value to the proceeds plus a five percent administrative fee will be placed on the property.

- a. Criteria for eligibility. In general, the resource must be at least 50 years old and maintain its physical integrity so that it sufficiently conveys its original character; possess integrity of design, setting, material, technique, feeling and association, and meet at least one of the following criteria:
 1. Is associated in a significant way with the life of a person important in the past;
 2. Is the land or location of a historic event with significant effect upon the community, city, state, or nation;
 3. Exemplifies the historical, cultural, political, economic, or social trends of the community;
 4. Portrays the environment in an era of history characterized by one or more distinctive architectural styles;
 5. Embodies the distinguishing characteristics of an architectural style, or period, or method of construction;
 6. Is an outstanding work of a prominent designer or builder; and
 7. Contains elements of design, detail, materials, or work of outstanding quality or which represents a significant innovation or adaptation to the South Florida environment.
- (5) *Application process and documentation required to qualify as an "eligible historic resource."* Applications for a determination of eligibility in connection with the transfer of development rights program will contain the information required within a local historic designation report, and sufficient supporting documentation to enable the HEPB to make a valid conclusion. The application will include:
1. Photographs of all elevations illustrating the existing conditions;
 2. Most recently available copy of the Miami-Dade County assessor's office record for the property;
 3. Affidavit for proof of ownership;
 4. Written description of the property, noting architectural style, building materials, roof shapes, and ornament, as applicable;
 5. Written description of the changes to the property that have occurred over time, as applicable;
 6. Results of Miami City Directory search to identify original resident/business establishment, as applicable;
 7. Bibliography of historical records used in the research, as applicable;
 8. Written evaluation of the property's significance using the criteria established in subsections 23-4(a)(1—8);
 9. Other information as deemed necessary by the planning director; and
 10. Any fees specified for this purpose.
- (6) *Review for certification of an eligible historic resource.* Once the application for a determination of eligibility has been deemed complete, the preservation officer shall schedule the application before the next regularly scheduled meeting of the HEPB. At least ten days prior to the meeting at which the application will be heard, the owner or their designated agent or representative, shall be notified of the board's intent to consider the application. A person whose interests in the proceeding are adversely affected in a manner greater than those of the general public may request intervenor status as defined in this chapter.

In making its decision as to whether to certify the resource, the board shall consider:

- a. Whether the resource is of such interest or quality that it meets one or more of the criteria established by subsections 23-4(a)(1—8);
- b. Whether the resource maintains its physical integrity, or whether it has been altered to such a degree that it no longer conveys the qualities for which it was deemed historically significant;
- c. Whether the preservation of the resource will promote the general welfare of the city by providing an opportunity for the study of local history, architectural and design, or develop an understanding of the importance and value of a particular culture and heritage;
- d. Whether or not the resource is one of the last remaining examples of its kind in the city, region, or state.
- e. Should the HEPB find that the proposed resource meets the criteria and considerations to be deemed an eligible historic resource; within 30 days of that decision, a "certificate of eligibility" will be prepared by the historic preservation officer, and mailed (via certified mail) to the applicant.
- f. Appeals from the decision of the HEPB. The property owner, any one member of the city commission, the planning department, or any aggrieved party may appeal to the city commission any decision of the board on matters relating to such certifications by filing within 15 calendar days after the date of the decision a written notice of appeal with the hearing boards department, with a copy to the preservation officer. Such notice of appeal shall set forth concisely the decision appealed from and the reasons or grounds for the appeal. Each appeal shall be accompanied by a fee of \$500.00, plus the cost prescribed by chapter 62 for each mailed notice required pursuant to subsection 23-4(c)(3). The city commission shall hear and consider all facts material to the appeal and render a decision as promptly as possible. A person whose interests in the proceeding are adversely affected in a manner greater than those of the general public may request intervenor status as defined in this chapter. The city commission may affirm, modify, or reverse the board's decision. Any decision to reverse the board's decision shall require a three-fifths vote of all members of the city commission. Appeals from decisions of the city commission may be made to the courts as provided by the Florida Rules of Appellate Procedure. The provisions of subsection 23-4(c) shall remain in effect during the entire appeal process insofar as they do not conflict with this section, unless stayed by a court of competent jurisdiction. The appeal shall be a de novo hearing and the city commission may consider new evidence or materials. Appeals shall be made directly to the city commission, within 15 calendar days after the date of the decision, and follow the procedures described herein.
- g. Requirement for local historic designation, "eligible historic resources."
 1. A resource classified as an "eligible historic resource" may apply for a certificate of transfer following the determination of eligibility.
 2. Should the applicant apply for and receive a certificate of eligibility the eligible historic resource will be required to be locally designated through the formal process described in this chapter, within one year following the HEPB's determination.
- h. Conditions and safeguards—"Eligible historic resources."
 1. Upon the determination of eligibility by the HEPB, the owner shall be subject to the restrictions concerning the requirement for the issuance of a certificate of appropriateness for changes made to the building. The owner is prohibited from demolishing a structure deemed an eligible historic resource, until such time as an application for a special

certificate of appropriateness for demolition under the process contained in section 23-6 is adjudicated by the HEPB.

2. The "certificate of eligibility" will expire within one year from the HEPB's determination, at which time, the property owner must have applied for local historic designation of the resource which had been determined eligible.
- (7) *Calculations of available development rights (sending property).* For those properties deemed eligible to participate in the TDR program under the terms of section 23-6, the zoning administrator or their designee shall calculate the unused development potential (base development rights) that may be transferred to a receiving property at 100 percent of the available square feet permitted by the underlying transect, thereby recognizing the additional requirements associated with the rehabilitation of a historic property.
- (8) *Requirements for the preservation of eligible historic resources (sending properties) using the provisions of the TDR and TDD—Application process.* The purpose of this incentive is to ensure that historic resources are preserved for the public benefit, public welfare, conservation, and aesthetics. The requirements that follow apply to all buildings which make use of the TDR and TDD programs. The use of the TDR and TDD resource will be tied to capital improvements on the sending property. The quantity of TDD and TDR value available for sale will 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 ratio specified below. A restrictive covenant to maintain the property is also required, must be in a form acceptable to the city attorney, and must be recorded in the public records of Miami-Dade County. Any work approved by a certificate of appropriateness with an active building permit or issued a certificate of occupancy after April 1, 2012, shall qualify if it meets the criteria specified below.

Therefore, following the qualification of any eligible historic resource, the applicant requesting the certificate of transfer shall provide the planning department with:

- a. A copy of the building permit application which lists the estimated cost of construction or a signed contract with a licensed and insured contractor for work approved by a certificate of appropriateness.
- b. A determination of the maximum value of the saleable TDR and TDD resource. The applicant will determine the maximum value of the proposed sale of the combined transferable development rights and transferable development density. The value will equal the following:
 1. The expenses directly related to the construction of the building (hard costs such as materials, supplies, and equipment) as determined in the building permit application construction cost estimate or by providing a signed contract for work. Soft costs such as professional costs are excluded.
 2. An additional percent over the hard cost value, with the 30 percent broken down as follows:
 - A. Twenty percent of the value of capital improvements for use by the applicant for fees associated with design, financing, legal, and other pre- and post-construction expenses (soft costs).
 - B. Ten percent of the value of the capital improvements to be retained temporarily by the city in the form of either a letter of credit or a bond after the sale of the resource. The bond will be released back to the applicant upon confirmation of the completion of the work as outlined in subsection (11) below.

(9) *Requirements for the issuance of TDRs for "non-contributing" properties within the Miami Modern (MiMo)/Biscayne Boulevard historic district.* "Non-contributing" properties. The intent of the special incentives along Biscayne Boulevard is to provide capital for improvements to buildings that may have fallen into disrepair, and thus contribute to the overall appearance and stability of the boulevard as a whole. Therefore, following the qualification of a non-contributing property as eligible for the TDR and TDD benefits, the owner/applicant shall provide the planning department with:

1. All materials as laid out in subsection (8) above.
2. A special certificate of appropriateness application for the improvements to be made to the structure, noting the improvements designed specifically to promote a harmonious relationship with other structures within the boulevard historic district.
3. The special certificate of appropriateness will be processed in accordance with the provisions contained in section 23-6.2.

(10) *Release of conditional certificate of transfer.* The planning director, or his/her designee, will prepare the conditional certificate of transfer for the unused development rights and density upon receipt of an approved building permit for the historic resource or an executed contract for work approved by a certificate of appropriateness. The conditional certificate of transfer will allow for sale of unused development rights and density, but will expire within a set period of time and render all transactions void unless additional criteria are met as described below in subsection (11). The conditional certificate of transfer will be released when:

1. A building permit for the historic resource has been issued or a copy of an executed contract, including proof of applicable bonding, funding, and insurance requirements, for work approved via a certificate of appropriateness has been submitted in the event the work does not require a building permit.

The approved building permit must be for work reviewed by the HEPB.

The approved building permit must match that permit applied for and used for calculating the value of the sale pursuant to subsection (8).

When an executed contract is provided rather than a building permit, proof of licensure and insurance for the contractor shall be provided.

(11) *Release of certificate of transfer.* The planning director, or designee, will prepare the non-conditional certificate of transfer for the unused development rights and density for historic resources upon completion of the following:

1. Filing of a restrictive covenant with the city by the sending property. The restrictive covenant shall be in a form acceptable to the city attorney and be recorded at the owner's expense in the public records of Miami-Dade County within 30 days of its acceptance by the city. The original restrictive covenant or a certified copy of the recorded restrictive covenant to be furnished to the planning director within 30 days of it being recorded will be maintained by the planning department. The restrictive covenant shall provide:
 - A. That the eligible historic resource will be maintained to a standard consistent with the building department's standards for "Forty (40) year recertification";
 - B. That the requirement for long-term maintenance will follow the title to the property through any subsequent owners;
 - C. That the city will be advised of any change in property ownership.
2. A bond or irrevocable letter of credit representing a minimum of ten percent of the value of the improvements proposed in the building permit has been posted with the city's planning

department to be used in the event the owner defaults from the owner's promise to make the improvements. A bond shall be written by an approved surety company and shall comply with state law so as to be substantially in the form provided by F.S. § 255.05, and shall carry the name and address of a local representative. Any irrevocable letter of credit shall be drawn on a local bank, which means a national bank authorized to transact business in Florida and maintaining an office in Miami-Dade County. Any bond or irrevocable letter of credit shall be in a form acceptable to the city's risk management department and city attorney and must name the city as the sole beneficiary/obligee/payee as applicable.

- A. A bond or irrevocable letter of credit will be released back to the owner following the full completion and acceptance of the work and the issuance of a certificate of occupancy and/or a review of the work by the historic preservation officer or the historic preservation officer's designee.
 - B. In the case where a cost-of-work estimate was provided rather than a building permit, the historic preservation officer or the historic preservation officer's designee will review proof of payment and the contractors and/or sub-contractor's final release(s) and waiver(s) of lien prior to release of the bond or letter of credit.
 - C. If the historic preservation officer or historic preservation officer's designee determines that the work is not completed pursuant to the approved plans and standards reviewed by the HEPB, the city will collect on the bond or letter of credit and deposit funds into the historic preservation trust fund.
 - D. An owner may appeal the decision to collect on the bond to the HEPB.
3. Submission to the city's department of planning of a copy of the sales contract for the TDD and/or TDR between the buyer and seller of the resources.
 4. Submission to the city's department of planning of an affidavit stating that the buyer and seller of the TDR and TDD resources are acting independently and have no other relationship to each other; that both parties in the transaction are acting in their own self-interest and are not subject to any pressure or duress from the other party; and that there is no collusion between the buyer and seller (a.k.a. an arm's length transaction).

(Ord. No. 13008, § 2, 6-26-08; Ord. No. 13116, § 2, 10-22-09; Ord. No. 13512, § 2, 4-9-15; Ord. No. 13676, § 2, 4-27-17; Ord. No. 13712, § 2, 11-16-17; Ord. No. 13785, § 2, 9-13-18; Ord. No. 13912, § 2, 7-23-20; Ord. No. 13971, § 3, 2-25-21)

Editor's note(s)—Ord. No. 13116, § 2, adopted October 22, 2009, changed the title of section 23-6 from "Transfer of development rights for historic resources; provision for a determination of eligibility process, and special provisions for resources within the Miami Modern (MiMo)/Biscayne Boulevard Historic District" to "Transfer of development rights for historic resources; provision for a determination of eligibility process, and special provisions for resources within the Miami Modern (MiMo)/Biscayne Boulevard Historic District; prohibiting certain uses; and establishing a 35-foot height limit."