

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Land Use and Sustainability Committee

FROM: Alina T. Hudak, City Manager 

DATE: January 25, 2023

SUBJECT: **Discuss the Creation of a Transfer of Development Rights (TDR) Program, Including Receiving and Transfer Districts.**

HISTORY

On September 14, 2022, at the request of Commissioner Ricky Arriola, the City Commission referred a discussion item regarding the creation of a Transfer of Development Rights (TDR) program, including receiving and transfer districts, to the Land Use and Sustainability Committee (LUSC). This referral was made as part of the First Reading discussion on the proposed Resiliency Code and Land Development Regulation (LDR) Updates (Item R5 E).

On November 16, 2022, also at the request of Commissioner Ricky Arriola, the City Commission referred a discussion item regarding the creation of a Transfer of Development Rights (TDR) program, including receiving and transfer districts, to the LUSC (Item C4 B). For purposes of discussion, both referrals have been combined into a single item.

BACKGROUND

TDR is a mechanism whereby property owners in a sending district are able to sell or transfer unused development rights, such as floor area 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 right. 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.

Pursuant to Section 1.03(c) of the City Charter, a TDR program within the City of Miami Beach would require a ballot referendum, as the increase in floor area ratio (FAR) within a receiving district is considered an increase in zoned FAR. Should the public approve the program, implementing legislation would have to be adopted into the Land Development Regulations (LDRs). Such implementing legislation would establish sending (transfer) districts and receiving districts and contain all necessary safeguards to ensure that City and resident goals are carried out. Generally, this ensures that the overall development capacity of the jurisdiction is not increased, while allowing for new development in certain areas

ANALYSIS

A local program could be used to incentivize the long-term resiliency of historic buildings while at the same time encouraging new resilient development that achieves other goals, such as transit oriented development or workforce and affordable housing. Any such transfer of development rights could be predicated on:

- 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 a number of 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 receiving district properties must 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 don't 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 city, one challenge to implementing a TDR program is that it can be cumbersome to manage. Limitations that sending property owners may encounter could discourage them from selling their surplus development rights. Additionally, since many properties are 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 of these challenges could limit receiving district property owners' ability to amass 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 discourage 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, neither proposal for these areas 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 major 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 have been 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

If the LUSC wishes to explore establishing a TDR program, the Administration would initially suggest exploring the designation of non-single-family historic districts and sites that are most vulnerable to the impacts of sea level rise as sending districts. Areas that could be considered include the following:

- Flamingo Park Historic District;
- Ocean Beach Historic District;
- Museum Historic District;
- Collins Waterfront Historic District;
- Normandy Isle Historic District;
- North Shore Historic District; and
- Flamingo Waterway Historic District.

Potential Receiving Areas

The Administration would initially suggest exploring the designation of high and medium density multifamily and commercial areas that are not in historic districts as receiving districts. Potential areas that could be considered are the following:

- Fifth Street corridor;
- Alton Road corridor;
- West Avenue corridor; and
- 41st Street Corridor.

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

CONCLUSION

The Administration recommends that the Land Use and Sustainability Committee discuss the item and provide appropriate policy direction. If there is consensus on moving forward with the sending and receiving districts identified herein, it is further recommended that the item be sent to the full City Commission for referral to the Planning Board, as well as the drafting of the required ballot questions for an FAR increase.


ATH/RW/TRM/RAM