

ORDINANCE NO. 2006-04

AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF DORAL, FLORIDA,
CREATING A TRANSFER OF
DEVELOPMENT RIGHTS ORDINANCE TO
PROVIDE GREATER FLEXIBILITY IN THE
PATTERN OF DEVELOPMENT AND IN
PRESERVATION OF OPEN SPACE AND
PUBLIC PURPOSE OBJECTIVES;
PROVIDING FOR DISQUALIFIED LAND;
PROVIDING FOR SEVERABILITY;
PROVIDING FOR INCLUSION IN THE
CODE; PROVIDING FOR AN EFFECTIVE
DATE

WHEREAS, the City Council of the City of Doral finds the proposed Transfer of Development Rights consistent with the City's proposed CDMP; and

WHEREAS, the City Council of the City of Doral has determined that it is in the best interests of the residents of the City of Doral to create a Transfer of Development Ordinance Zoning District to provide for higher development standards;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DORAL, THAT:

Section 1. The foregoing "WHEREAS" clause is hereby ratified and confirmed as being true and correct and is hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. The Code of Ordinances of the City of Doral, therefore be, and the same is, hereby amended to create an ordinance entitled "TDR Transfer of Development Rights" as follows:

Sec. 3 Title

This Article shall be known and cited as the "City of Doral TDR Transfer of Development Rights Ordinance."

Sec. 4 Definitions.

(A) Purposes and applicability. This article is intended to provide for greater flexibility in the pattern of development by allowing for the transfer of development rights (unused floor area and density) from one parcel to another where such transfers will assist in the renewal, rehabilitation, and where preservation of open space, natural resources, preservation of view corridors, provision of educational or other public purpose objective may be achieved through such shifts in the development pattern, upon the approval of the City Council.

(B) Definitions. As used in this section, the following terms shall have the meanings

indicated:

COMPREHENSIVE PLAN — The Comprehensive Plan of the City of Doral.

DEVELOPMENT RIGHTS — A development right is an appurtenant right of land ownership that has an economic value separate from the land itself, subject to reasonable regulation by local government under its police power. As referred to herein, such development right being density or intensity can be transferred from a sender site as defined below, by the owner of that site, to a receiving site also defined below, through gift or sale.

DIRECTOR — Director is defined as the City Manager, or his/her designee, as may be amended from time to time by the City Manager.

LDR — Land development regulations of the City of Doral consistent with the Comprehensive Plan of the City of Doral.

RECEIVER SITES — Parcels of land located within one of the approved districts as set forth herein below to which development rights may be transferred and used.

RECEIVING DISTRICTS — Areas within the corporate boundaries of the City that are permitted to receive transferable development rights as defined in the City's Comprehensive Plan and as reflected in the attached Map of Receiver Districts. The Map of Receiver Districts is on file in the City offices.

SENDER SITES — Parcels of land located in which development rights can be severed, to be transferred to a receiver site.

SENDING DISTRICTS — Any area within the corporate boundaries of the City that are permitted to transfer development rights as permitted by and as set forth herein.

SEVER — The removal of a development right from property rights possessed by an owner of real property. The term connotes a removal or separation, in perpetuity, as distinguished from a restriction or limitation, which may be overridden, deleted or is subject to a time frame.

TRANSFERABLE DEVELOPMENT RIGHTS — A development right is an appurtenant right of land ownership that has an economic value separate from the land itself, subject to reasonable regulation by local government under its police power, and may be transferred from the land from which the right is severed (sender site) to another piece of land (receiver site). Once severed, and if only a portion of the development rights attributable to a sender site is transferred, the remaining rights may be banked by the City as described below. Units transferred shall be composed of square footage only and may be made through gift or sale of those units. These rights are sometimes referred to hereunder as "TDR's."

Sec. 5 Procedure

(A) Establishment of sender sites. Any property in any zoning district, upon the specific approval by the City Council, at the Council's sole discretion may be eligible as a sending site; provided however, that the severance and transfer of right, from that site shall be subject to the terms and conditions of this chapter.

(1) City owned sender sites. With respect to city owned sender sites, all development rights calculated in square footage severed therefrom, shall be deposited in a bank more particularly described in Subsection E hereinbelow from which withdrawals of those rights may be made after purchase by a private developer upon specific approval by the City Council at a public hearing as described in Subsection D and in accordance with the other terms of this chapter. In no case shall the transfer of any TDR's from a City owned site currently designated as park sites interfere with the use of those public parks and said parks shall forever remain as public parks.

(2) Privately owned sender sites. The City Council , at its sole discretion, may approve at a public hearing as described in Subsection D hereinbelow, a privately owned sender site to allow it to transfer square footage for commercial, office, retail or units for residential which shall be either utilized or transferred for purposes of computing density or intensity to a receiver site, provided that upon the initial transfer from privately owned sender sites, such sender sites conveyed to City ownership of site shall remain undeveloped except to be utilized for the accomplishment of a public purpose consistent with the Comprehensive Plan, including, but not limited to, the creation of public parks, plazas and/or open space, the conservation of historic, sensitive, environmental and archeological resources, the protection and enhancement of waterfront, public access corridors not otherwise required by the Land Development Regulations, or the development of public educational facilities and other essential public facilities, including but not limited to recreational, public works, maintenance and operational facilities on the sender site.

(a) In furtherance thereof, the entire sender site shall be dedicated to public ownership or preserved for any public purpose. Taxes on privately owned sender sites shall be paid by the owner, until actual transfer of such land to the City. The sender site shall be unencumbered, free and clear of any or all liens and mortgages prior to dedication and transfer of said site. The sender site shall be dedicated to the public either by the transfer of fee title to the City or perpetual deed restriction or easement, in a form acceptable to the City.

(b) The owner of the sender site will be permitted to bank in accordance with Subsection E hereunder any remaining rights from the site for a five-year period. At the expiration of the five-year period, the TDR's shall expire and become extinguished and unusable.

(3) Establishment of receiver sites. All property within the City of Doral are herewith established as receiver sites for the acceptance of transferred development rights. Receiver sites may be developed as otherwise permitted by the Land Development Regulations, as may be amended from time to time, in combination

with the development rights available to the site, provided that the overall density achieved is consistent with, and does not exceed, the overall density and intensity allowable by the Comprehensive Plan. If an approval was granted prior to the adoption of this section, pursuant to which a permit has been issued, that site shall not be available as a receiver site, unless the prior approval is revoked and a new development order is secured hereunder.

(B) Calculations.

(1) Transferable development rights from City owned property. In the case of City owned sites, calculations will be based on the zoning permissible at the time of incorporation and prior to the City's acquisition of the site for public purposes. A transferable development right for a unit shall be calculated and determined by the permitted density of the sending site. Only whole units may be purchased and transferred to the receiver. All of the foregoing, however, is subject to all limitations set forth herein and in the City's Comprehensive Plan.

(2) Cost of transferable development rights from City owned site. Upon receiving approval by the City Council for a transfer of a development right to a receiver site, the cost for a unit of development right shall be determined by the market value of the receiver site as delineated by a current real estate appraisal prepared for the City by a City designated appraiser, acceptable by the City Manager, but paid for by the owner of the sending site. Since the issuance of city-owned TDRs shall be from a bank, the formula set forth in Subsection B(1) above shall be applied to the totality of the banked units (density) based on the average of the underlying zoning.

(3) Transferable development rights from private property. In the case of privately owned sites, the City shall determine density on the site. In order to determine density, the applicant shall file a proposed site plan that demonstrates compliance with the underlying land use and zoning. The proposed site plan must be approved by all relevant governmental jurisdictions as required by the Planning and Zoning Director. If the present zoning classification of the property is not consistent with the future land use designation than the applicant must assure the most appropriate zoning designation, as determined by the Planning and Zoning Director, when proposing a site plan. The parties shall file documentation verifying such transfer of rights in accordance with Subsection D hereinbelow.

(4) Cost of transferable development rights issued by private owners. Upon receiving approval by the City Council, which approval is in its sole discretion, of the sender site as a site acceptable for the use as a public property, the price of the transferable development rights shall be determined by the private owners.

(C) Development limitations.

(1) Development limitations upon privately owned sending sites. Prior to exercise of the transferable development rights issued by a transferee (the receiving site) pursuant to this section, the property owner of the sending site (transferor) shall deliver to the City a

current survey, a warranty deed conveying good, marketable and insurable title along with a Form B title policy pertaining to the sending site, once staff has determined it wishes to accept that site and the City Council has subsequently approved such acceptance as recreational or other approved public purpose use, or open space use in accordance with the expressed intent of this section. Upon approval by the City Council and receipt of conveyance documents and title insurance policy by the City, correction of any outdoor code violations and payment of all fines due and owing to the City, then and only in that event shall the City authorize the release of the transferable development rights and document same in its records. Notwithstanding the foregoing, the property owner of the sending site may dedicate the sender site by perpetual deed restriction or easement, in a form acceptable to the City.

(2) Development limitations upon receiving sites.

- (a) Within the receiving districts, development rights shall be limited by a combination of the underlying zoning regulations, approved bonuses and allowable development rights transferable to the land in the receiving districts. Notwithstanding anything to the contrary, and in accordance with the Comprehensive Plan, neither the transferable density or intensity of permitted uses shall exceed 20% of the maximum residential, commercial or industrial density permitted on the receiver site and in no case shall the resulting density bonus increases on any given receiver site exceed the number of dwelling units attainable on the sender site(s) under these plan provisions so as to assure no net increase in City-wide residential, commercial or industrial density Comprehensive Plan capacities occurs.
- (b) Parking and all other requirements of the LDRs shall be required in accordance with any additional density acquired through the transfer of development rights.
- (c) All TDR's purchased or transferred shall be used within 24 months from the date of obtaining Zoning approval or said rights shall thereafter be fully extinguished.
- (d) The transfer of development rights to a receiving site will not decrease required open space, buffers, setbacks or cause a request for variances or any other adverse impact to surrounding site or increase allowable height, if applicable.
- (e) No property upon which a prior approval was granted may apply for transferable development rights unless a site plan application is made for the entire site.
- (f) All monies received by the City in connection with the transfer of development rights from City-owned sites shall be utilized for capital improvements only.

(D) Procedures pertaining to the transfer of development rights.

- (1) Application. An applicant for the transfer of development rights shall file an application with the Planning and Zoning Director, who shall place the request on the agenda of the City Council, after it is determined that the application is complete and all other requirements have been complied with. Every application shall contain the signatures of the fee simple owners of all properties involved, a description of adjacent lands, including land uses, densities, circulation systems, public facilities and the impact, if any, of the transfer of development rights. The application shall be subject to the same notice and hearing requirements that are required for zoning applications under the Land Development Regulations. A fee for the consideration of this application shall be set from time-to-time by the City Council. The applicant shall be responsible for consultant fees pursuant to the City's fee schedule. Such application shall include the following:
- (a) The application shall include plans, construction schedules, site conditions map including a perspective and/or mass model of the proposed development potential as compared to the development potential utilizing the proposed transfer of development rights, status of financing, if applicable, consideration including purchase price of the property, if applicant is a contract purchaser and a general description of the manner in which the project shall be construed. The plans shall include, but not be limited to, a site plan elevation, landscaping, an area analysis of surrounding properties including but not limited to street elevations, height of buildings, surrounding floor area ratio and density, impact, if any, of the transfer of development right to adjacent properties, copies of any covenants affecting the receiver and sending site, and any other agreements required by the Land Development Regulations and this section.
 - (b) Every application should include the signature of all fee simple owners of all properties involved in the application (sender and receiver sites).
- (2) Reviewing by Planning and Zoning Director. The Planning and Zoning Director shall review the application and shall make findings of fact and recommend the application to the City Council, which may approve, approve with modifications or conditions, or deny such application, within their sole discretion.
- (3) Scheduling of hearing. Prior to a hearing being scheduled on the eligibility, of a site for either the City's acceptance or for the transfer of development rights to a receiver site, all documents required hereunder for the transfer of development rights including but not limited to a current survey, appraisal and all proposed conveyance documents shall have been reviewed and approved by City staff prior to the scheduling of any hearing.
- (4) Review by City Council.
- (a) The City Council shall review the application and the findings and recommendation of the Planning and Zoning Director and after notice and

hearing as required under the Land Development Regulations, may approve, approve with modifications or conditions, or deny the application for transfer of development rights at its sole discretion . An approval shall be conditioned upon delivery to the City of an executed grant of easement creating a development limitation set forth in Subsection C above, as recording copies of same together with a copy of the approval resolution in the property records for Miami-Dade County, and may include other reasonable conditions. The City Council shall review the application based on the following criteria; provided, however, that whether or not the application is approved is solely within City Council's discretion:

- (1) The project is consistent with the Comprehensive Plan and will not reduce the levels of service set forth in the plan.
 - (2) The project is consistent with the intent of these regulations set forth in this section.
 - (3) The project meets all other criteria set forth in the LDRs.
 - (4) The transfer of development rights is desirable on the individual site being considered for purposes of enhancing overall development and the sender site is dedicated to public ownership or preserved for public purpose to a conservation easement or other recordable mechanism, creating view corridors, improving pedestrian environment, public right-of-way and publicly owned property, accomplishing the public purpose that is consistent with the Comprehensive Plan and Subsection E hereinabove. The sender site shall be dedicated to the public either by the transfer of fee title to the City or perpetual deed restriction or easement, in a form acceptable to the City.
 - (5) The development on the receiving site shall be designed to produce an environment of desirable character and harmony with the neighborhood, resulting in a superior quality of development and open space relationships with high standards for recreational and parking areas. The transfer of these rights shall create a logical and superior pattern of development, which would not otherwise occur if the property were developed without them.
- (b) If the City Council finds the transfer of development rights on any given site meets the foregoing criteria, it may approve, with or without conditions, by ordinance, such transfer.
- (5) *Transfer process.* A hearing on the eligibility of a site to send or receive a transfer of rights may occur simultaneously with the zoning application, but the transfer may not occur until a second public hearing has been held and the City Council has made a determination within its sole discretion. The actual conveyance shall

require a separate public hearing (second reading to be finally approved and the issuance of the ordinance approving such transfer shall automatically change the TDR map).

- (6) Consultants. Hiring of consultants to review data including engineering, planning, legal, appraisal, technical or environmental issue, shall be chargeable to the applicant in accordance with the City's fee schedule.
- (7) Recording of documents. Thirty days after the passage of the ordinance approving a transfer of development rights, that transfer shall be recorded by the applicant in the public records of Dade County on both the sender and receiver sites and an irrevocable covenant running against the land shall be recorded on the receiving site, including the additional density, required parking and any other conditions imposed by the City Council. The owner of the receiver site shall agree to bind itself, its successors and assigns of the property and development with regard to all conditions, and no changes may occur without approval by the City Council that was involved in the initial approval. In the event no building permit is issued within 24 months from the date of approval, the TDRs reflected in the public records shall be extinguished and the recorded documents shall contain a warning to that effect so the any buyer of the property shall be so informed.
- (8) Official zoning atlas and future land use map. The official zoning atlas and future land use map must be updated to reflect the transfer.
- (E) TDR bank. The City may create and administer a "bank" for unused development rights to facilitate the sale and transfer of development rights. The City Council may impose a fee for banking development rights for private developers. The administration of the bank shall be conducted by the City Manager or designee and the procedures and charges for such administration may be established by resolution.
- (1) Privately owned sender sites. Development rights that are not actually utilized from a privately owned sender site upon conveyance of the site to the City shall be deposited in the TDR bank. Withdrawals from that bank must occur within the five-year time frame as set forth in Subsection A(2)(b) hereinabove and such owner shall waive any all rights to assert any claim to those rights except as specifically permitted by the terms of this section. All requirements of this section shall be met prior to the actual transfer (withdrawal) of development rights.
- (2) City owned sender sites. Upon the adoption of this section, the City shall deposit all development rights (in terms of units) from its sender sites in the TDR bank for distribution and transfer in accordance with the procedures set forth in this section subject to all limitations of this section except the five year limitation.

Section 6. All Ordinances or parts of Ordinances in conflict herewith be, and the same are, hereby repealed to the extent of such conflict.

Section 7. It is the intention of the City Council of the City of Doral, and it is hereby ordained, that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances, that the sections of the Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 8. If any Section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 9. This Ordinance shall become effective immediately upon its passage and adoption.

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The foregoing Ordinance was offered by Councilman DiPietro who moved its adoption. The motion was seconded by Councilman Van Name and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Peter Cabrera	Yes
Councilman Michael DiPietro	Yes
Councilwoman Sandra Ruiz	Yes
Councilman Robert Van Name	Yes

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA ON FIRST READING THIS 25th DAY OF JANUARY, 2006.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA ON SECOND AND FINAL READING THIS 22nd DAY OF FEBRUARY, 2006.

CITY OF DORAL, FLORIDA



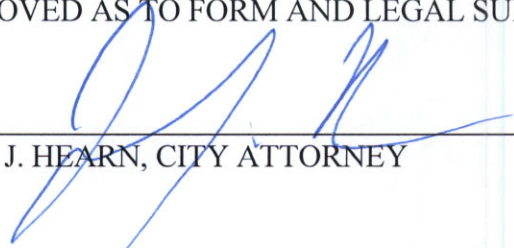
JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



BARBARA HERRERA-HILL, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



JOHN J. HEARN, CITY ATTORNEY