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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director   
Legislative Policy Division

DATE: September 4, 2024

RE: **TRANSFERABLE DEVELOPMENT RIGHTS (TDR)**

Council Member Coleman A. Young II, requested the Legislative Policy Division (LPD) provide a report on Transferable Development Rights (TDR) and how this tool might benefit the city of Detroit. Please accept the following as our response.

The transfer of development rights involves the sale of a parcels' development rights from one parcel (the sending area) to the owner of another parcel (the receiving area), which allows more development on the second parcel while reducing or preventing development on the originating parcel. Under a TDR program, development rights are severed or reduced from a site designated for protection and those rights are transferred to a parcel where additional development is permitted.

TDR programs allow vulnerable land and buildings (in the sending area) protection against being destroyed by development, by persuading their owners voluntarily to accept restrictions on their ability to undertake legally permitted development. In return property owners receive credits which can be sold to developers (in the receiving area). The revenue received from the sale of TDRs compensates owners in the sending area for the restrictions they have voluntarily placed on the development of their property. Developers can use the credits to construct at a higher density in the receiving area than would otherwise be permitted. Thereby recovering the cost of acquiring TDRs. <sup>1</sup>

<sup>1</sup><https://documents1.worldbank.org/curated/en/260991541401819816/pdf/Transferable-Development-Rights-Technical-Note>

The following list the three most common reasons TDR programs are created:

- The preservation of historical buildings/districts or farmlands.
- As growth management tools to prevent urban sprawl.
- In support of infill development.

TDR programs generally fall into three broad categories: <sup>2</sup>

1. Conventional TDR programs which transfer development potential from rural to urban areas, focusing on preserving agricultural and environmentally sensitive land, including wetlands, forests, animal habitats, and open space. Their focus is more on preserving sending areas than on developing the receiving areas.
2. Hybrid TDR programs that transfer development potential from rural to urban or fringe locations. Although these programs incorporate preservation goals, hybrid TDR programs place a strong emphasis on incentivizing development because they designate receiving areas in fringe locations where there is heightened demand for or fewer barriers to new development. These programs typically promote smart and compact growth patterns, often through new town or village development forms.
3. Rural TDR programs are designed to shift development between a rural sending area and a rural receiving area, these programs create a mix of compact communities and conserved land with a goal of accommodating growth while permanently protecting resource lands.

TDR programs as a land planning tool, have been around for decades. The concept is now used by more than 250 local governments in the U.S. <sup>3</sup> Programs around the country vary widely and are specifically tailored depending on several factors, including the scale of the undertaking, the overall purpose of the program, and the desired outcomes. The following are examples of some the more successful and widely known TDR programs.

### New York City

New York City has used Transferable Development Rights (TDR) for over 50 years, to achieve planning and urban design goals – examples include 74-79 Landmark Transfers, large-scale development provisions, and Special District mechanisms in the South Street Seaport, the High Line, and the Grand Central and Theater Subdistricts. Some have been successful, and others less so.<sup>4</sup> The 74-79 Landmark Transfers, involved the adoption of a resolution allowing landmark property owners (Grand Central) to transfer their air rights in order to mitigate the financial burden of owning a landmark property, while still preserving the historic resource. Grand Central used Zoning Resolution 74-79 to transfer approximately 75,000 sq. ft of air rights to the Phillip Morris Building at 120 Park Avenue. This way the landmark property owner was able to receive economic value for the undeveloped air rights while still maintaining the historical site.<sup>5</sup>

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<sup>2</sup> A national inventory and analysis of US transfer of development rights programs  
Todd K. BenDor, Jordan Branham, Andrew Whittemore, Evangeline Linkous & Dylan Timmerman  
Pages 2276-2296 | Received 27 Jul 2020, Accepted 19 Jul 2021, Published online: 18 Oct 2021

<sup>3</sup> Transfer of Development Rights: Innovations from Florida, March 31, 2021, Dr. Evangeline Linkous

<sup>4</sup> Transferable Development Rights - DCP (nyc.gov)

<sup>5</sup> Protecting New York City's Urban Landmarks Through Transferrable Development Rights, January 11, 2013

## **San Francisco, California**

The city developed a program in response to record growth in the downtown areas during the mid-80's. The San Francisco Transfer Development Rights (TDR) program was designed to preserve the city's "unique historic, architectural and aesthetic character." The TDR program allows owners of historic buildings to transfer unused development floor area to other properties that can benefit from adding more buildable square footage than would otherwise be allowed. For the past three decades, the TDR program has helped the city to accommodate growth downtown while providing owners of historic buildings with incentives to maintain cultural resources.<sup>6</sup>

## **Montgomery County, Maryland**

Montgomery County, Maryland, located north of Washington DC, includes a number of urban and employment centers such as Bethesda. This program is credited with having preserved over 132,000 acres of farmland, 40% of which was through the use of TDRs. The remainder of the farmland that has been preserved is in federal, state, and county parks. In terms of the area of farmland preserved, Montgomery County is seen as being one of the most successful TDR schemes in the USA.<sup>7</sup>

## **Palm Beach County, Florida**

Palm Beach County, Florida has one of the oldest and most successful TDR programs in the nation. Palm Beach County has used TDR since the 1980s to preserve environmentally sensitive lands. In 1991, Palm Beach County voters approved a \$100-million bond to purchase 35,000 acres of environmental lands. Development rights from these protected lands were "banked" for sale to developers, creating a revolving fund for ongoing maintenance and acquisition of environmental lands.<sup>8</sup>

Although TDRs sound simple in concept, where development is just transferred from one location to another. TDR program implementation and success have been uneven around the country, with wide variation on the number of trades and amount of land preserved under adopted programs.<sup>9</sup> Some localities have seen very little or no trading, while other TDR programs have enabled significant land conservation and infill development.

When considering the introduction of a TDR program, any municipality or government should consider what it is trying to achieve. TDRs come with significant direct and indirect cost and there are usually alternative policies capable of realizing the same objectives which should be considered before deciding that a TDR program offers the best option.<sup>10</sup>

TDR markets work as a land preservation tool when landowners are willing and able to sell development rights, and developers are interested in buying those rights. The strength of the supply and demand sides of the market will determine the process at which TDRs are sold.

The willingness of suppliers to provide TDRs and of developers to buy those rights depends on the local design, zoning rules, underlying housing, and land market conditions in the region. In addition, the existence of other land preservation programs in the community can also affect the TDR program, either positively or negatively. A study conducted by Ms. Evangeline Linkous, Professor of Public Affairs at the University

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<sup>6</sup> <https://documents1.worldbank.org/curated/en/260991541401819816/pdf/Transferable-Development-Rights-Technical-Note>

<sup>7</sup> id

<sup>8</sup> Transfer of Development Rights: Innovations from Florida, March 31, 2021, Dr. Evangeline Linkous

<sup>9</sup> Nelson 2011 Linkous and Chapin 2014, Page 3

<sup>10</sup> <https://documents1.worldbank.org/curated/en/260991541401819816/pdf/Transferable-Development-Rights-Technical-Note>

of South Florida found that with the exception of a few success stories, TDR programs generate few transfers.<sup>11</sup>

TDRs are not a silver bullet and in fact are just one tool to assist in the preservation of land and historical sites and promoting infill development in urban centers. These programs are not one size fits all and must be given much consideration and careful planning prior to implementation.

The fact that TDR programs are by nature market driven and voluntary, and the wide array of programs and economic development tools available to assist developers in our city and state, brings into question whether such an initiative would garner enough participation in Detroit with the current economic climate.

Just as every community has its' own unique qualities, the TDR program must speak to the specific planning needs of the community. In a city like Detroit that has an abundance of vacant land, it seems highly unlikely that there could be a market created for the purchase and sale of transferable development rights/credits.

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<sup>11</sup> Linkous, E. R. (2017). Transfer of development rights and urban land markets. *Environment and Planning A: Economy and Space*, 49(5), 1122-1145. <https://doi.org/10.1177/0308518X16686794>