



City of Sanibel

Planning Commission

Planning Department Agenda Memorandum

Planning Commission Meeting Date: August 11, 2026

To: Planning Commission

From: Paula McMichael, AICP, Planning Director

Date: August 4, 2026

TITLE: Continuation of Transfer of Development Rights (TDR) Discussion

REVIEW TIMELINE

Date	Meeting Type	Summary
07/15/25	City Council	City Council discussed the possibility of creating a transfer of development right (TDR) program; providing a framework to be able to sell units of density from one place to another. Direction was given for the city attorney to provide an opinion on how the city's charter would affect such a program.
09/09/25	Joint Workshop	Staff and consultant presented materials as it relates to establishing a TDR program. Planning Commission and City Council discussed and provided direction for Planning to take a broad approach (i.e. that may require approval by voter referendum) to develop TDR program concepts that start by answering "four basics" of TDRs (public purpose, sending & receiving zones, voluntary or mandatory program, and fair compensation) and develop concepts that would further conservation, affordable housing, and resort redevelopment goals.
12/09/25	Planning Commission	Discussion of draft concepts. Planning Commission requested that staff reach out to the chamber of commerce to determine the status of resorts that have not yet undertaken redevelopment.
05/26/26	Planning Commission	Continued discussion of draft concepts. Update from chamber of commerce. Direction to staff to bring back a framework for a TDR program specific to the Resort Housing district.
8/11/26	Planning Commission	Discussion of draft concept specific to the Resort Housing District.

ATTACHMENTS

Attachment A	Agenda Memorandum from Planning Department dated December 1, 2025
Attachment B	PowerPoint from Planning Commission meeting of December 9, 2025
Attachment C	Updated Resort Housing District Inventory dated May 11, 2026 (unbuilt units)
Attachment D	City Attorney Opinion dated September 7, 2025, regarding whether a voter referendum of the qualified electors of the City (i.e., Sanibel residents registered to vote in Sanibel) is required to transfer any residential density rights from one parcel to another
Attachment E	Agenda Memorandum from Planning Department dated May 19, 2026
Attachment F	Resort Housing District – status of properties as of August 2026
Attachment G	Nonconforming Use of Dwelling Units as Resort Housing, Outside of the Resort Housing District (short-term rentals outside of the Resort Housing District) – status of properties as of August 2026

EXECUTIVE SUMMARY

Staff evaluated options for allowing dwelling units to be transferred between willing property owners within the Resort Housing District. Following prior discussions in December 2025 and May 2026, the Planning Commission expressed informal majority support (5–2) for continued development of a potential framework.

Staff finds that a formal transfer of development rights program is unnecessary. Traditional TDR programs compensate owners when development potential is restricted in designated “sending areas.” Here, both owners would participate voluntarily, and the City would not remove or take development rights. The contemplated transfer can therefore be addressed through targeted amendments to the Sanibel Plan and Land Development Code.

Any framework should recognize that density under the Sanibel Plan is assigned parcel by parcel—not collectively across the Resort Housing District. Although most resort properties (98%) exceed current mapped density limits, the City Charter permits redevelopment up to the number of dwelling units existing on May 4, 2004. A transfer framework would require a clearly defined public purpose and controls ensuring that each increase in dwelling units on a receiving parcel is matched by an equal reduction on another parcel within the Resort Housing District.

Staff does not recommend extending the program to resort properties outside the Resort Housing District. These properties are nonconforming uses that were previously excluded because short-term resort occupancy was considered incompatible with surrounding residential neighborhoods. Their inclusion would require expansion of the district and could jeopardize the City’s existing authority to regulate short-term rentals under section 509.032(7)(b), Florida Statutes, and relevant Florida Attorney General guidance.

If directed to proceed, staff recommends developing a narrowly tailored, voluntary density-transfer framework limited to properties already within the Resort Housing District, including:

- An amendment to the Sanibel Plan authorizing transfers between parcels within the existing Resort Housing District.

- Land Development Code amendments establishing eligibility, transfer, documentation, and enforcement requirements.
- A conditional-use approval process, including final approval by a supermajority vote of the City Council, comparable to the process used for below-market-rate housing increased density exceptions.
- Either a voter-approved Charter amendment establishing an express density-transfer exception or, if the Charter is not amended, voter approval of the Plan and Code ordinances as required for actions increasing parcel-level residential density.

RECAP of DISCUSSION

At the Planning Commission meeting of December 9, 2025, planning staff presented research regarding potential frameworks for a transfer of development rights program. The agenda memorandum and PowerPoint from that meeting are included as Attachments A & B for reference. At the Planning Commission meeting of May 26, 2026, the Chamber President, John Lai, attended to answer questions from commission members and staff presented a recap of the December discussion (see Attachment E). At the conclusion of the discussion, Planning Commission indicated majority support (5-2) through an informal poll for staff to continue development of a potential framework for the Resort Housing District.

SUMMARY OF ISSUE

“Transfer of Development Right” programs are typically established to remove development rights from lands where these rights exist but the local municipality has determined that development in that location should be discouraged or prohibited, generally due to:

- the cost to provide adequate services (sewer, water, roads, schools, etc.)
- the vulnerability of the land to natural disaster (e.g. flooding), or
- in support of public goals such as:
 - conservation of environmentally sensitive lands,
 - preservation of agricultural lands, or
 - preservation of an historic district or structure.

That area becomes a “sending zone” of development rights.

In general, a “sending zone” represents a large area where the value of the development rights is too costly for a local government to simply purchase the property or otherwise adequately compensate property owners for the taking. A TDR program typically seeks to compensate a property owner for a perceived “taking” of the development potential and its associated value from a property by creating a value for the “development right” in a receiving zone.

Based on the discussion related to the resort housing district, both property owners would be willing participants in the transfer of units, so that there would be no “taking” of development potential or value by the city, and therefore no need to develop and provide a compensatory mechanism to transfer density (i.e. a TDR program). The transfer can be accomplished without establishing a formal TDR program.

The discussion at Planning Commission focused on creating a way for a resort housing developer to acquire more density without needing approval of the request by a vote of city residents, as currently required by the

charter, plan, and code. The justification put forth was that allowing the transfer would be limited so as to not exceed the overall number of units existing “on May 4, 2004” within the Resort Housing District.

As previously discussed, density is neither regulated nor allocated based on a district or a total city-wide number of dwelling units. The plan and code allocate density on a parcel-specific basis, based on the Development Intensity Map adopted as part of the Sanibel Plan. Only 2 of the 93 properties within the Resort Housing District are developed in compliance with the limitations of the Development Intensity Map; 98% exceed the density limitations of the Sanibel Plan. The charter already includes an exception which allows redevelopment of these properties in excess of the density limitations of the Sanibel Plan – to “permit redevelopment of existing parcels up to the number of existing dwelling units on May 4, 2004”

Nonconforming Use of Dwelling Units as Resort Housing, Outside of the Resort Housing District

There has been continued mention of redevelopment of properties that are not within the Resort Housing District. These properties have a nonconforming use – a use (short-term rental of less than four consecutive weeks) that was lawful when established but no longer conforms with the city’s regulations. These “nonconforming” resorts were previously excluded from the Resort Housing District based on incompatibility of the resort housing use with adjacent longer-term residential uses. Resort housing use has been found to be incompatible based on the rapid turnover in occupancy and its disruptive influence on the peaceful use and enjoyment of homes (Sec. 126-632). The nonconforming use of these properties as short-term rentals can be re-established subject to “build back.” The ability to “build back” will expire at the end of this year (December 15, 2026). The expansion of nonconforming uses is prohibited by the Sanibel Plan, Section 3.6.2:

Objective B8

Existing land uses that are nonconforming with the Future Land Use Map, that is, nonconforming with permitted uses regulated by the Ecological Zones Map, Commercial District Map, Wetlands Conservation Lands Map and the Resort Housing District Map will not be expanded.

Policy B8.1. Permits will not be issued for the expansion of nonconforming land uses.

In order for those properties to take advantage of an increase/decrease density program, a concomitant amendment to the Sanibel Plan would be needed to add these properties to the Resort Housing District. City Council would need to make a policy decision that based on a re-evaluation of those properties, such concerns related to the incompatibility of the resort use with residential neighborhoods no longer exist. However, the state pre-empts the ability of local governments to prohibit or regulate short-term rentals per §509.032(7)(b) F.S.:

- (b) A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

Additionally, a recent Attorney General Opinion (AGO2022-01) was issued after the City of Daytona Beach sought an opinion on the legality of creating an overlay zoning district that would authorize vacation rentals to an area where it was not currently allowed (akin to an expansion of the Resort Housing District). In holding that such an action would exceed the regulatory authority of a local government, the AG states as follows:

By creating a limited geographical exception to the otherwise comprehensive base zoning district vacation rental prohibition, the proposed zoning overlay ordinance would “regulate the ...

frequency of rental” of vacation rentals in the underlying base zoning districts. Therefore, the City may not implement the proposed zoning overlay ordinance consistent with the constraints of section 509.032(7)(b), Florida Statutes.

Based on state statutes and the attorney general’s opinion, staff does not support an amendment to expand the Resort Housing District. Doing so would negate the city’s ability to regulate short-term rentals.

POTENTIAL PROCESS TO INCREASE/DECREASE DENSITY TO AMEND CHARTER, PLAN, and CODE

1. **Establish a public purpose** for allowing the transfer of dwelling units between properties in the Resort Housing District.
2. *Referendum step – the city would follow either this step #2 or #5 below.* Based on the process now proposed, a **charter amendment**, while the “cleanest” method to allow a program to increase densities on multiple properties, would not be required. Therefore, *step #2 is optional.*
 - Develop an **ordinance to amend the charter** (subject to voter referendum) to allow an additional exception for increasing density:

... nothing contained in this Section 3.10.2 shall preclude the city council from permitting residential densities in excess of those established in the Sanibel Plan, where the purpose is ... 3) to increase density on an existing parcel so long as density is reduced by an equal number of dwelling units on an existing parcel, all within the Resort Housing District ...
 - **Request an attorney general opinion** regarding the proposed language, as it affects a charter provision that, if it were enacted today, would be contrary to state law (“deemed null and void and of no legal force and effect”). (See Attachment D, the city attorney’s opinion, and Attachment E, the agenda memorandum from the May 26, 2026, Planning Commission meeting, for further discussion of the state pre-emption).
3. Develop an **ordinance to amend the Sanibel Plan** to reflect the exception and support the transfer of densities between parcels in the Resort Housing District. (As a reminder, one dwelling unit in the Resort Housing District is calculated as having more persons per unit than in the residential districts, so that the densities are not equivalent between short-term rentals and residential use. For a recap of how density (persons per acre) is calculated differently in the Resort Housing District, please see Attachment A, the staff report dated December 1, 2025).
4. Develop an **ordinance to amend the land development code** to establish a process by which the transfer authorized by the charter and plan can be accomplished.
 - Staff suggests a process similar to that by which the second exception, for increased-density for the Below Market Rate Housing program, is implemented and would suggest **approval by conditional use permit**, with a similar requirement for final approval by City Council by supermajority vote.
5. *Referendum step – the city would follow either step #2 above or this step #5.* **If a charter amendment is not pursued, send both ordinances to vote by referendum**, in accordance with the requirement that:

Actions to increase the residential development density as established in the Sanibel Plan, as constituted on May 4, 2004, ... may be taken by the city only by ordinance

approved by a majority of the qualified city electors voting at the next general election or a special election called for such purpose ...

FUNDING SOURCE: N/A

RECOMMENDATION

Discussion of the potential framework for transferring densities between existing parcels in the Resort Housing District and consensus on a recommendation to forward to City Council for consideration and direction.