



City of Sanibel

Planning Commission

Planning Department Agenda Memorandum

Planning Commission Meeting Date: May 26, 2026

To: Planning Commission

From: Paula McMichael, AICP, Planning Director

Date: May 19, 2026

TITLE: 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 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.

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

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
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PROPOSAL SUMMARY

At the Planning Commission meeting of December 9, 2025, former Deputy Director Chandler 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.

The conclusions from the agenda memorandum are repeated, below.

- 1. Staff find strong support for conservation as a public policy purpose for transfer of development rights in the Sanibel Plan.*
- 2. Below Market Rate Housing (BMRH) is also supported by the Sanibel Plan for increased densities and is therefore a legitimate public purpose for a TDR program. However, existing codes already provide a much simpler process to obtain increased density for BMRH via conditional use permit.*
- 3. Increased densities in the Resort Housing District to aid redevelopment, as a public policy purpose for a TDR program, is not supported by available evidence. The Plan does allow existing hotels, motels, and resort condominiums in the Resort Housing District to maintain existing nonconforming development intensity through redevelopment, provided there is continuation of short-term occupancy, however the provision does not recommend increasing or transferring densities. Furthermore, Sanibel Plan policies restrict increased development intensity both in the resort housing district and at vulnerable coastal areas. If a public policy purpose is substantiated by available evidence, a text amendment to the Plan is necessary to consider adoption of a Resort Housing District TDR program.*
- 4. Generally, staff find limited application and therefore limited public benefit to a TDR program relative to other more efficient alternatives in service of conservation and affordable housing goals.*

At the conclusion of the discussion, the consensus of the planning commission was for staff to coordinate with the Sanibel-Captiva Chamber of Commerce regarding the status of the resorts that have not yet submitted permits or undertaken development. The Chamber president, Mr. John Lai, will be in attendance to answer questions from the commission.

RECAP OF DISCUSSION

The Planning Commission considered a potential TDR program for the following three public purposes:

1. To support Below Market Rate Housing
2. To support conservation of environmentally sensitive lands
3. To support redevelopment in the Resort Housing District

Transferring density would need to be consistent with the City Charter, the Sanibel Plan, and the Sanibel Code of Ordinances. To the extent such a process is not currently enabled by the charter, plan, or code, amendments to all three would be required.

CITY CHARTER

In reviewing how a TDR program might be established, staff begins with a discussion of the charter provision related to density. Please also see Attachment D, the city attorney's opinion. The charter provision in its entirety is repeated, below, followed by a detailed analysis of the language.

Section 3.10.2. - Ordinance increasing residential development intensity.

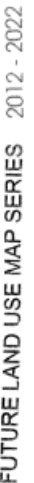
Actions to increase the residential development density as established in the Sanibel Plan, as constituted on May 4, 2004, except for rounding upward of fractional allocations of fifty percent (50%) or more to the next whole number, may be taken by the city only by ordinance approved by a majority of the qualified city electors voting at the next general election or a special election called for such purpose; provided, however, that 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 1) to provide incentives for the Below Market Rate Housing Program, or 2) to permit redevelopment of existing parcels up to the number of existing dwelling units on May 4, 2004, provided the redevelopment is otherwise in conformance with the Sanibel Plan and the Land Development Code. Any law or regulation which is in conflict with this Section 3.10.2 is hereby repealed.

More specifically:

"Actions to increase the residential development density as established in the Sanibel Plan, as constituted on May 4, 2004 ..."

Residential development density is established in the Sanibel Plan by the Development Intensity Map, which allocates density on a site-specific basis. While there has been some discussion of 9,000 units as an overall development cap, that is an estimated number used for a theoretical build-out. It is not a regulatory number. Density is allocated via the development intensity map and is site-specific. See the excerpt, below, as an example of how density is apportioned. The numbers represent units per acre. "OS" is "open space" and is not assigned a density.

DEVELOPMENT INTENSITY MAP



“... except for rounding upward of fractional allocations of fifty percent (50%) or more to the next whole number ...”

“ ... 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; ...”

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Sanibel is and shall remain a barrier island sanctuary

“... provided, however, that 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 1) to provide incentives for the Below Market Rate Housing Program, or ...”

Increasing densities as shown on the development intensity map for Below Market Rate Housing does not require approval by a majority of electors (vote by referendum).

“... 2) to permit redevelopment of existing parcels up to the number of existing dwelling units on May 4, 2004, provided the redevelopment is otherwise in conformance with the Sanibel Plan and the Land Development Code. ...”

Allowing redevelopment (which is an activity defined in the Land Development Code specific to the Resort Housing District) “up to the number of existing dwelling units on May 4, 2004,” does not require approval by a majority of electors (vote by referendum). As previously discussed, 91 (98%) of the 93 properties in the Resort Housing District are developed in excess of the densities allocated by the development intensity map. However, these properties may redevelop consistent with the units that were existing as of May 4, 2004, even though these densities are inconsistent with the development intensity map.

1. BELOW MARKET RATE HOUSING

As discussed previously, the Charter, Plan, and Code, already provide a process by which increased densities may be approved without voter referendum to support the below market rate housing rental program. Given that this process and exemption from the voter referendum requirement already exist, staff concludes that a TDR program to support the BMRH program is not necessary.

Conclusion from the agenda memorandum of December 1, 2025: “Below Market Rate Housing (BMRH) is also supported by the Sanibel Plan for increased densities and is therefore a legitimate public purpose for a TDR program. However, existing codes already provide a much simpler process to obtain increased density for BMRH via conditional use permit.”

2. CONSERVATION

As discussed previously, the only mention in the 300 plus pages of the Sanibel Plan to support a TDR program is as a potential “mitigating consideration” in approving increased residential density on a specific site:

To promote further conservation of environmentally sensitive lands by creating incentives to set aside sensitive land from development, such as the transfer of development rights.

Based on a preliminary analysis of vacant lands that could be included in a conservation based TDR program (based on criteria already established in the Plan), staff estimated approximately 176 dwelling units could be transferred; however, with the note that “this is likely an overestimate due to undetermined site conditions and common ownership history.” (See page 4 of the December 1, 2025, agenda memorandum).

However, a TDR program is not necessary in order to support conservation goals. As mentioned in the Plan, the city previously had a program, which did not have a TDR component:

The City of Sanibel began a funded program in 1987 to acquire environmentally sensitive lands for conservation purposes. The City has acquired numerous small parcels of land, totaling 400

acres, which will be preserved and protected. An estimated \$1 million to \$1.5 million worth of environmentally sensitive lands has been purchased through this program.

The conclusion from the agenda memorandum dated December 1, 2025, stated that “Staff find strong support for conservation as a public policy purpose for transfer of development rights in the Sanibel Plan.”

3. RESORT HOUSING (SHORT-TERM RENTALS)

As already mentioned in the analysis of the charter provision, the resort housing redevelopment program allows resorts to retain nonconforming densities (existing number of dwelling units as of May 4, 2004). The allowance to retain nonconforming densities and to redevelop these resorts does not expire.

An analysis of vacant properties within the Resort Housing District was presented to Planning Commission in December. Since December, one additional resort (Gulf Beach, containing 14 units) has submitted a permit to “build back.” There remain 11 properties, comprising 263 units, that have been demolished and have not submitted for permits to reconstruct. An updated resort housing inventory is provided as Attachment C. The relevant table is also included, below.

TYPE	OWNER	UNITS	ADDRESS	NOTES
Hotel/Motel Inn/Cottage	BRE/Seaside Inn Owner LLC	31	541 EAST GULF DR	Seaside Inn - demolished
Timeshare	Surfrider Beach Club Assoc.	31	555 EAST GULF DR 101	Surfrider Beach Club - Preapplication Meetings for Redevelopment. Architectural and site plans completed for redevelopment. COA did not submit permit application.
Condo or Apt.	Clamshell Condo Assoc	6	1801 OLDE MIDDLE GULF DR	Clamshell - Multiple Preapplication Meetings.
Hotel/Motel Inn/Cottage	Hutchings Ventures II LLC	15	1081 SHELL BASKET LN	Gulf Breeze Cottages – last inquiry May 2024 re: ability to redevelop resort housing
Duplex	Hutchings Ventures II LLC	2	1104 SHELL BASKET LN	Inquiries regarding ability to rebuild duplex
Single-Family	James Kilchenman & Leslie Kilchenman	1	1105 SHELL BASKET LN	
Single-Family	James Kilchenman & Leslie Kilchenman	1	1113 SHELL BASKET LN	
Single-Family	John & Jodi Miller	1	1121 SHELL BASKET LN	
Timeshare	Caribe Beach Resort	26	2669 WEST GULF DR 1A	Last inquiry Feb. 2025 for non-resort residential
Hotel/Motel Inn/Cottage	BRE/Sanibel Beach Owner LLC	45	3287 WEST GULF DR	Sanibel Sunset Beach Resort – inquiries from potential buyer regarding redevelopment May 2026
Hotel/Motel Inn/Cottage	West Wind Association of Sanibel LLC	104	3345 WEST GULF DR	West Wind Inn - Multiple preapplication meetings and preliminary reviews of site plan.
TOTAL		263		

The conclusion from the agenda memorandum dated December 1, 2025, stated that “Increased densities in the Resort Housing District to aid redevelopment, as a public policy purpose for a TDR program, is not supported by available evidence. The Plan does allow existing hotels, motels, and resort condominiums in the Resort Housing District to maintain existing nonconforming development intensity through redevelopment, provided there is continuation of short-term occupancy, however the provision does not recommend increasing or transferring densities. Furthermore, Sanibel Plan policies restrict increased development intensity both in the resort housing district and at vulnerable coastal areas. If a public policy purpose is substantiated by available evidence, a text amendment to the Plan is necessary to consider adoption of a Resort Housing District TDR program.”

CURRENT PROCESS TO TRANSFER DENSITY AS ALLOWED BY CHARTER, PLAN, and CODE

Applicants file an application to amend the Sanibel Plan (specifically, to amend the development intensity map).

Applications must be filed jointly by property owners of the sending and receiving parcels.

Applications filed pursuant to Sec. 82-242 subject to Planning Commission review and recommendation.

Authorized by City Council (Sec. 82-32 – requires a supermajority vote) subject to voter referendum per Sec. 3.10.2.

Cost of referendum would be incurred by the applicant.

PROCESS TO ESTABLISH A TDR PROGRAM

Establishing a TDR program requires a charter amendment (subject to voter referendum) to allow an additional (third) exception:

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 transfer density ...

If the voters are being asked to create a new exception for increasing densities, an exception that would afterward exempt these transfers from approval “by a majority of the qualified city electors voting at the next general election of special election,” a detailed program would need to be developed, including the necessary comprehensive plan amendments and land development code amendments, and then presented to the public at a series of public workshops, similar to the public discussion that has and will take place regarding the potential roundabout.

STATE PRE-EMPTIONS

The Florida Legislature amended state law in 2011 to prohibit a local government from requiring an initiative or referendum to amend a comprehensive plan land use map. The section of Florida Statutes was again amended in 2014 and 2023. Sec. 163.3167 F.S., subsection (8) currently reads (underlining added for emphasis):

- (a) An initiative or referendum process in regard to any development order is prohibited.
- (b) An initiative or referendum process in regard to any land development regulation is prohibited.
- (c) An initiative or referendum process in regard to any local comprehensive plan amendment or map amendment is prohibited unless it is expressly authorized by specific language in a local

government charter that was lawful and in effect on June 1, 2011. A general local government charter provision for an initiative or referendum process is not sufficient.

- (d) A citizen-led county charter amendment that is not required to be approved by the board of county commissioners preempting any development order, land development regulation, comprehensive plan, or voluntary annexation is prohibited unless expressly authorized in a county charter that was lawful and in effect on January 1, 2024.
- (e) It is the intent of the Legislature that initiative and referendum be prohibited in regard to any development order or land development regulation. It is the intent of the Legislature that initiative and referendum be prohibited in regard to any local comprehensive plan amendment or map amendment, except as specifically and narrowly allowed by paragraph (c). Therefore, the prohibition on initiative and referendum stated in paragraphs (a) and (c) is remedial in nature and applies retroactively to any initiative or referendum process commenced after June 1, 2011, and any such initiative or referendum process commenced or completed thereafter is deemed null and void and of no legal force and effect.

The city would likely need to request an attorney general opinion before moving forward with a charter amendment affecting 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”).

FUNDING SOURCE: N/A

RECOMMENDATION

Continued discussion of the potential for a transfer of development rights program and consensus on a recommendation to forward to City Council for consideration and direction.