

A Transferable Development Credits (TDC) Pilot Program in Portland's Central City

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Introduction

Portland's Central City seems a logical choice for a receiving area in a TDC pilot program due to its demand for density and institutional capacity for planning. However, that demand is already met with a zoning code written to achieve high levels of density: it includes base zoning restrictions, but also incentive zoning options allowing the developer to build additional Floor-Area-Ratio (FAR) in exchange for providing specified public benefits.

TDCs would give Central City developers one more option for obtaining permission to build additional FAR; this tool would be the 25th option on that menu. This new option preserving public benefits far from the Central City would compete with the existing options offering benefits closer-in and often on-site. Competition already exists in the current system: a developer will choose the option that provides the greatest return on his investment. The overhaul of the Central City Plan will reevaluate the existing incentive zoning options, aiming to increase their transparency and usage. TDCs could fit onto a revamped menu of options.

Incentive Zoning Menu

In the existing system, six FAR transfer options allow developers to transfer FAR between sites on adjacent blocks. 18 density bonus options allow developers extra FAR in exchange for the provision of on-site amenities such as locker rooms and eco-roofs as well as off-site amenities such as public art or open space along the Willamette.

Table 1 (attached) shows the six FAR transfer options in Portland's current Central City Plan. Note that they are grouped into four categories, intra-project, cross-district, sub-district, and master plan transfers, depending on the distance across which the FAR can be transferred in each option. Another difference between the options on Table 1 is that the first and last offer flexibility in the design process but do not provide a direct public benefit as do the others. In these cases, planners consider the public benefit to be the additional density in itself, creating vibrant communities with a flexible code. In the other four cases, a developer provides a direct public benefit when she transfers FAR, preserving something that Portlanders value in their City such as historic landmarks.

Table 2 (attached) shows the 18 density bonus options in Portland's Central City. Far more complex than the FAR transfer options, variables include "where the bonuses can be used; what type of projects are eligible; how the amount of bonus is calculated; the maximum amount of bonus that can be earned; [and] the specific standards that the public benefit must meet" (Johnson Gardner, LLC, 2007: 22).

As Table 2 shows, the 18 density bonus options fit into six different categories. Automatic bonuses are awarded in two cases where the public benefit is considered to be the additional density itself. Specified Use, Design Specification, Open Space, and Percentage bonuses require

the provision of on-site amenities. Fund bonuses, on the other hand, act more like the FAR transfer options in Table 1, where a developer essentially buys the extra FAR; in these two cases she makes a contribution to a fund which provides off-site amenities.

Valuation

The value of FAR varies from project to project with land value, construction costs, and achievable pricing. “Adding bonus or transfer FAR to a project changes the entitlements of the property, and therefore changes the land value and the value of the FAR itself,” making the value of the bonus far equal to that change in the residual land value (Johnson Gardner, LLC, 2007: 15).

In all FAR transfer scenarios, developers buy and sell FAR through a process of negotiation. Developers negotiate directly with property owners holding transferable FAR to determine a price acceptable to both parties. Though appraisal can be difficult, the cost of this transferable FAR is closer to market value than the (usually) more expensive FAR purchased through density bonus options, inspiring developers to choose the former route if available to them. The average price of transferable FAR is \$10 per square foot with a range from \$6.50 to \$18.00.

The cost of a density bonus is non-negotiable, unlike FAR transfer options, and is determined through the cost of the public amenity provided. The value of that bonus varies, however, depending on how that amenity affects the profitability of the project. Ways to measure value include the amount of bonus square feet per square foot of amenity required; the cost of providing the amenity per square foot of bonus; and the relative value of the bonus accounting for cost and revenue. The last measure most accurately assesses the reality that developers face in seeking profitable projects.

Bonuses that provide on-site amenities have the potential to increase investors’ returns on projects simply due to the amenities, unlike Automatic or Fund bonuses. The Locker Room is a popular option because it offers by far the largest bonus per square foot of amenity (40 square feet), the lowest cost per square foot of bonus (\$6), and one of the highest relative values. The Eco-roof option is also popular, offering the second largest bonus per square foot of amenity (3 square feet), the second lowest cost per square foot of bonus (\$8), and a high relative value. Not all are as popular: the Day Care option costs \$63 per square foot of bonus and has only been used twice, likely in situations where the developers were going to provide the day care regardless.

Below Grade Parking, Large Household Dwelling Unit, Rooftop Garden, Middle Income Housing, Open Space, and Theaters on Broadway actually offer negative relative values of bonus FAR in residential projects: “the cost of providing the public benefit is so great that it diminishes the return on the whole project, even with the bonus FAR” (Johnson Gardner, LLC, 2007: 29). For commercial projects, Open Space and Theaters on Broadway again offer negative relative values.

The Residential bonus is by far the most widely used option: it offers the greatest relative value of bonus FAR for residential projects since it is an Automatic bonus. The Small Development Site and Large Dwelling Unit bonuses also offer a 100% return on the investment but have never

been used, either because developers are uninterested in small sites and large dwelling units or because of competition with the Residential bonus. The Residential bonus gives away density in an area where there was previously a lack; now, however, there is concern with possible overuse at the expense of other incentive zoning options (Johnson Gardner, LLC, 2007).

Clearly, these incentive zoning options compete against each other when a developer is seeking a FAR bonus for a project. This may not be true in cases where the developer was already planning to provide the required amenity and thus is only interested in one of the options, or when a developer transfers FAR between properties that he owns. Typically, however, a developer simply seeks a bonus of some type and will choose the option or options that offer her the greatest return on her investment (Johnson Gardner, LLC, 2007).

Recommendations

TDCs act just like Fund bonuses and FAR transfers in that a developer essentially buys the bonus FAR with cash instead of with an on-site amenity. TDCs will compete with these as well as the other options on the menu: each option is actually a purchase of additional FAR for a price, whether that price is the cost of FAR transferred from a nearby site, the cost of FAR transferred from a Measure 49 site, the cost of the required donation to a fund, or the cost of providing a required amenity. To implement this pilot program while improving the overall incentive zoning system at the same time, planners might take the following steps.

First, developers and the City might negotiate the cost and terms of the TDCs from Measure 49 sites and the density bonus options as property owners do for the FAR transfer options. Negotiation, though at times cumbersome, requiring knowledgeable and well-intentioned parties and a clearly delineated process, is a good way to ensure that the City's density and amenity goals can be met regardless of market cycles. Negotiation has the potential to eliminate the severe discrepancies between the values and therefore popularity of the options, making moot such issues as the added profits that on-site amenities offer and the negative relative values of some of the density bonus options. This would give the City much more control of the amenities it receives and the density it achieves, more in line with the State's methodical planning processes.

Second, the City might establish a bank to facilitate the TDCs expected from Measure 49 sites as well as the FAR transfers that are already a part of the incentive zoning system. The bank would purchase credits from property owners with Measure 49 claims or with transferrable FAR under the existing FAR transfer system and charge developers a fee to purchase credits from the bank. This way, complicated and complete transactions need not occur with every transfer; rather, sellers can offer the bank their development credits when they are ready to sell, and buyers can purchase when they are ready to buy. This would eliminate the problem developers have fitting options together like puzzle pieces in order to build to the maximum allowable density. Property owners and developers would negotiate with the bank in this scenario.

Banking bonus FAR for density bonus options is trickier, though. In theory, the City could provide the off-site amenity of its choice with a developer's fee; and a developer might provide

an on-site amenity in lieu of a fee. However, since the bank does not need to hold cash or credits in these cases, it cannot profit from the trade.

Third, the City might rely on regulation to increase the effectiveness of a market-based tool. Portland's Central City is more likely to achieve its desired density if it changes its regulatory structure. Negotiation or banking alone or in combination do not guarantee that developers will be interested in participating in the process and that the City will receive the density it seeks.

For example, the City could require the provision of certain amenities that increase projects' profitability or are likely to be included anyway, such as locker rooms, day cares, or public art, for projects of given costs and types. In conjunction, the City would require that developers contribute, in proportion with project cost, to an impact fund that the City would use to purchase and retire Measure 49 development credits and to provide off-site amenities. And, the City would raise the maximum density limits to the current limits including bonus FAR.

Finally, planners might properly contextualize the City's incentive zoning system. In the struggle to amend the system, planners could lose sight of the significance of the options' relative success and the system's overall success. For example, developers have used the Automatic Residential bonus 34 times, but the second most popular option, the Eco-Roof density bonus, only six times. Of the 18 density bonus options, only one appears to be relatively useful in achieving the City's goals and it is an essential FAR giveaway. This indicates that drastically altering the ways that developers can achieve bonus FAR, including narrowing the menu or more strategically regulating density, is a viable alternative to pursue.

Table 1. Portland Central City FAR Transfer Options (Johnson Gardner, LLC, 2007)

<i>Option</i>	<i>Type</i>	<i>Applicable Projects</i>	<i>Mechanism</i>	<i>Public Benefit</i>
Abutting Lots Transfer	Intra-project	Site with abutting lots or within the same block in CX and EX zones	FAR transferred among lots in a single project	Encourages place-making opportunities
SRO Housing Transfer	Cross-district	Planned or existing SRO buildings in CX, EX, and RX zones	Unused FAR potential transferred anywhere in Central City	Preserves affordable housing
Historic Property	Cross-district	Properties designated Historic Landmark in MFR, RX, RH, R1, CX, EX, EG1, EG2, IH, IG1 zones	Unused FAR potential transferred within two miles	Preserves historic landmarks
Residential Floor Area Transfer	Cross-district	Sites with residential development in Central City	Unused FAR potential transferred anywhere in Central City	Preserves Central City residential units
South Waterfront Transfer	Sub-district	Development sites in the South Waterfront District	Unused FAR potential transferred anywhere in South Waterfront	Preserves Willamette Greenway and open space
Central City Master Plan Transfer	Central City Master Plan	Master planned projects with multiple sites in the Central City	FAR transferred among sites (discretionary)	Encourages place-making opportunities

Table 2. Portland Central City Density Bonus Options (Johnson Gardner, LLC, 2007)

<i>Option</i>	<i>Type</i>	<i>Applicable Projects</i>	<i>Bonus</i>	<i>History</i>
Residential Bonus	Automatic	CX and EX zones outside of S. Waterfront, and Residential Bonus Target Areas	1 bonus square foot (SF) for 1 SF of housing	34 uses, 31 in the River District, most after 1998
Small Development Site	Automatic	West-end subarea	1.5:1 for sites up to 5,000 SF; up to .5:1 for 10,001 to 15,000	0 uses
Day Care	Specified Use	CX, EX, and RX zones outside of S. Waterfront	3 bonus SF for 1 SF of day care facility	2 uses, last in 1996
Retail Use	Specified Use	Min. .5:1 FAR dedicated to retail in Retail Use Bonus Target Area	Max. 3:1	3 uses, last in 2001
Theaters on Broadway	Specified Use	Broadway Theater Bonus Target Area	2 bonus SF for each SF of theater space	1 use, in 1998
Locker Room	Specified Use	CX and EX zones outside of S. Waterfront	40 bonus SF for each SF of locker room space	5 uses, last in 2001
Middle Income Housing	Specified Use	Central City	3 bonus SF for each SF of Middle Income Housing	0 uses
Rooftop Garden	Design Specification	Min. 50% roof area dedicated to garden in CX, EX, and RX zones outside of S. Waterfront	Max. 3:1	2 uses, in 2000 and 2005
Eco-roof	Design Specification	Central City	1 bonus SF for each SF of eco-roof that is 10-30% of footprint; up to 3 for over 60%	6 uses
Large Dwelling Unit	Design Specification	West-end subarea	1 bonus SF for each unit SF over 750 SF	0 uses
Large Household Dwelling Unit	Design Specification	South Waterfront district	150 bonus SF for each additional bedroom	0 uses
Below Grade Parking	Design Specification	West-end subarea	2 bonus SF for every SF of below-grade parking area	1 use, in 2003
Willamette River Greenway	Open Space	South Waterfront district	3 bonus SF for each SF of open space of at least 2,500 SF along greenway	1 use, in 2004
Open Space	Open Space	South Waterfront district	1 bonus SF for each SF of public open space	3 uses, in 2004 and 2005
Percent for Art	Percentage	Central City outside S. Waterfront	1:1 for 1% of project value committed to public art; up to 2:1	4 uses, in 1988, 1996, 1998, and 2001
Water Features / Public Fountain	Percentage	CX, EX, and RX zones	.1:1 for .1% of project value committed to an on-site or adjacent public water feature; up to .5:1	1 use, in 2001
Affordable Housing Replacement Fund	Fund	Central City	1 bonus SF for every \$10 contributed to AHRF	0 uses
Open Space Fund	Fund	South Waterfront district	1 bonus SF for every \$10 contributed to S. Waterfront Public Open Space Fund	0 uses

Resources

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