

ORDINANCE NO. 19-24

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE AMENDING CHAPTER 17.44 OF THE ORANGE MUNICIPAL CODE BY ADDING A NEW SECTION 17.44.210 TO ESTABLISH A MECHANISM FOR THE TRANSFER OF DEVELOPMENT RIGHTS TO CREATE OPPORTUNITIES FOR HOUSING, OPEN SPACE, AND TRAILS

WHEREAS, as a largely built-out community with constrained resources, Orange has limited opportunities to bring forward new parks, trails, and housing to address a long-standing community parkland deficiency, interest in recreational trails, and housing needs identified by the State of California; and

WHEREAS, the General Plan Land Use, Circulation and Mobility, Natural Resources, Economic Development, and Housing Elements include goals, policies, and narratives that express the high priority the community places on the protection and creation of open space and trails, and meeting the housing needs of the community and local business employment base; and

WHEREAS, Ordinance No.19- 24 provides the city with a mechanism to achieve the goals and policies of the General Plan Land Use, Housing, Natural Resources, Circulation and Mobility, and Economic Development Elements, and to implement General Plan Implementation Program I-5 and Housing Element Policy Action 2E which identify a transfer of development rights ordinance as a means of creating opportunities for housing and open space in portions of the city with Urban Mixed Use zoning; and

WHEREAS, the Planning Commission, having considered the proposed changes to the OMC contained in Ordinance No. 19-24 at a public hearing held on June 3, 2024, and having received public testimony on the item, determined the proposed ordinance serves the City's best interests and furthers the public health, safety and general welfare and recommended City Council adoption of Ordinance No. 19-24; and

WHEREAS, the City Council, having now considered the proposed changes to the OMC contained in this Ordinance No. 19-24 at a public hearing held on _____, and having received public testimony on the item, desires to adopt the proposed ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORANGE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I:

Final Program Environmental Impact Report (EIR) No. 1815-09 for the Comprehensive General Plan Update was certified on March 9, 2010 and prepared in accordance with the California Environmental Quality Act (CEQA). The proposed activity is within the scope of the previously approved General Plan and is adequately described in the previously certified General Plan

Program EIR for purposes of CEQA. This Ordinance is also exempt from the California Environmental Quality Act CEQA pursuant to, but not limited to, State CEQA Guidelines Section 15308 (Actions by Regulatory Agencies for Protection of the Environment) because it establishes a mechanism that relieves development pressure on privately owned property designated for open space and residential development. Therefore, no further CEQA documentation is required.

SECTION II:

Section 17.44.210 is hereby added to Chapter 17.44 of the Orange Municipal Code as follows:

17.44.210 Transfer of Development Rights.

A development agreement entered into pursuant to this Chapter 17.44 of the Zoning Ordinance may include provisions for the Transfer of Development Rights as set forth below.

Transfer of development rights (TDR) allows the owner of property in a Sending Area, as defined, to voluntarily sell and transfer certain rights to develop to the owner of property in a Receiving Area, as defined. The intent of the TDR process is to provide a mechanism to facilitate housing development in certain areas of the community while preserving certain undeveloped property to facilitate the development of parks and recreational trails.

The transfer/elimination of development rights from the Sending Area shall be separately recorded as a deed restriction on the property at issue prohibiting future development based on the same rights that were transferred to the Sending Area property in perpetuity. The TDR to the Receiving Area property will be memorialized in the development agreement.

A. TDR Sending Areas. In accordance with the requirements in this Section, development rights may be severed and sold from properties located in the following TDR Sending Areas:

1. Privately-Owned Open Space Sending Area. To preserve their habitat and other environmental benefits as undeveloped open space, properties in this Sending Area that are located fully within the Recreation Open Space, R-O zoning district, are eligible for TDR as a Sending Area property, except properties reserved as “open space” in conjunction with the approval of a tentative tract map.
2. Former Rail Right-of-Way Sending Area. To preserve land for public trails, the portion of properties that were formerly in the rail right-of-way and are either zoned with a residential classification or are un-zoned with a General Plan designation that includes residential use are eligible for TDR as a Sending Area property.
3. Resource Area Sending Area. To protect the public from areas unsuitable for development and provide opportunities for recreation and open space, properties in this Sending Area that are located fully within both the General Plan Designation Resource Area and Sand and Gravel (S-G) zoning district, are eligible for TDR as a Sending Area property.

B. TDR Receiving Areas. In accordance with the requirements in this Section, development rights may be used to increase the allowable residential density for properties located fully within

the Urban Mixed Use (UMU) zoning district, as contained in the City's Official Zoning Map, which generally, at the time of the adoption of this Ordinance, includes properties along Katella Avenue, Rampart Street, The City Drive, and Town and Country Drive.

C. TDR Sending/Receiving Areas In accordance with the requirements in this Section, development rights may be transferred within the Urban Mixed Use Zone areas, which shall be both Sending and Receiving Areas, by properties located fully within the Urban Mixed Use (UMU) zoning district, as contained in the City's Official Zoning Map, which generally, at the time of the adoption of this Ordinance, includes properties along Katella Avenue, Rampart Street, The City Drive, and Town and Country Drive.

D. TDR Credits. Development rights are expressed as a TDR credit, where one credit is equal to one residential dwelling unit. The use of TDR by an applicant is completely voluntary, and the price of the development rights is individually negotiated on a case-by-case basis between two willing property owners. The City shall maintain a publicly available ledger that records TDR credits certified by the City, development rights severed by Sending Area property owners, and TDR credits retired and used to increase the density of development by Receiving Area property owners.

E TDR Certification. Upon request of a Sending Area property owner and in conjunction with a completed application and payment of a fee that the City Council may adopt or amend, from time to time, by resolution, the Director of Community Development may certify the number of TDR credits which a property in a Sending Area can sever and sell, in accordance with the following:

1. Application for TDR Certification

The application for TDR certification shall include, at a minimum, the following:

- a. A copy of the deed to the lot or parcel;
- b. A title search completed within the six months prior to the application establishing whether the lot or parcel is subject to a deed restriction, or any other condition, covenant, or restriction that would prohibit or limit development on the lot or parcel;
- c. A conceptual property plan showing the development capacity of the lot or parcel and demonstrating compliance with setbacks, parking requirements, and all other applicable development standards;
- d. The address of the property owner or agent thereof to which the City may send correspondence regarding TDR certification, renewal, expiration, and any intended retirement of development rights pursuant to a development agreement that the City intends to execute; and
- e. Any other information deemed necessary by the Community Development Director.

2. TDR Credits.
 - a. Residential or Mixed-Use Sending Area Properties. For eligible Sending Area properties located in a residential zoning district or in an Urban Mixed Use (UMU) zoning district, the number of TDR credits shall equal the maximum number of residential dwelling units that the General Plan land use designation or the zoning district classification, whichever is higher, would allow to be constructed after accounting for any restrictions that would prohibit or limit residential development, less the number of residential dwelling units existing on the lot or parcel at the time of the application for TDR certification. The number of TDR credits shall be rounded down to the nearest one-tenth unit.
 - b. Former Right-of-Way Sending Area Properties. For eligible Sending Area properties located in the former rail right-of-way Sending Area and located in a residential zoning district or un-zoned with a General Plan designation that includes residential use, only the portion of the property that was formerly within the rail right-of-way shall be used to determine the number of TDR credits. Each such property shall have a minimum development right of one dwelling unit solely for the purpose of calculating TDR credits that can be severed and sold. The City may certify twice the number of TDR credits if the Sending Area property owner grants a public easement to use the portion of the property that was formerly in the rail right-of-way as a public trail.
 - c. Recreation Open Space and Sand and Gravel Zoned Sending Properties. For eligible Sending Area properties located in the Recreation Open Space (R-OS) zoning district or Sand and Gravel (S-G) zoning district, the development rights shall be expressed as equivalent dwelling units based on the maximum allowable density under the abutting residential land use district. Should there be more than one abutting residential land use district, the district with the higher density shall serve as the reference. The number of TDR credits shall equal the property area, measured in square feet or acreage, as appropriate, after accounting for any restrictions that would restrict or limit development, divided by the theoretical maximum density. The number of TDR credits shall be rounded down to the nearest one-tenth unit. The City may certify twice the number of TDR credits if the Sending Area property owner grants a public easement to use the property for public parks and open space.
3. Determinations. The Community Development Director shall have sole discretion in making the determination as to the number of TDR credits, with appeal rights as set forth in Section 17.08.050

4. Expiration of TDR Certification. Any TDR certification issued by the City shall be used within one calendar year from the date of issuance and may be renewed for up to two one-year periods upon submission of an application for extension and the payment of any fee that the City Council may adopt and amend, from time and time, by resolution, for both application and renewal of the TDR certification. The initial certification and any renewals granted by the City shall be recorded in the TDR Ledger. When a TDR certification has expired, the property owner may reapply for a new certification. Execution of a Development Agreement that includes the TDR credits in accordance with this Chapter shall constitute a use of development rights.
 5. Eligibility. Properties eligible for TDR as part of a Sending Area or Receiving Area must have been zoned as an eligible classification on the effective date of this Ordinance, except that properties zoned Commercial Recreation or un-zoned as of the effective date of this Ordinance that are re-zoned or zoned to Urban Mixed Use to achieve General Plan consistency shall be eligible for TDR.
- B. Sale of TDR Development Rights
1. Sales. TDR credits may be sold at the discretion of the owner of an eligible Sending Area property, as defined in Section A, only after the TDR credits have been certified by the City in accordance with Section D.
 2. Purchases. TDR credits may only be transferred to and retired by the owner of an eligible Receiving Area property, as defined in Section B, pursuant to a development agreement in accordance with Section H.
 3. City Sales and Purchases. The requirements of Section F(2) notwithstanding, the City of Orange may purchase and hold TDR credits and may sell TDR credits to owners of eligible Receiving Area properties when, in the sole discretion of the City, the sales and purchases of such TDR credits would improve the market for development rights and further implement the General Plan.
 - a. Any and all City purchases of TDR credits shall be with the voluntary consent of the Sending Area property owner. The City may use a reverse auction to ensure that it pays the lowest available price for TDR credits.
 - b. Any and all City sales of TDR credits shall be with the voluntary consent of the Receiving Area property owner. The City may use an auction to ensure that it receives the highest acceptable price for TDR credits.
 4. Development Agreement Required for Transfer. TDR development rights may only be transferred in conjunction with the adoption and execution of a development agreement in accordance with Section H and any other applicable provisions of this Municipal Code.

C. Use of TDR Credits

1. Use of TDR Credits. Pursuant to an executed development agreement, the City may allow each TDR credit purchased from a Sending Area property to be used on an eligible Receiving Area property to construct one residential dwelling unit in excess of the maximum density permitted under the General Plan designation or zoning classification, whichever is greater. Fractional TDR credits may only be used when bundled with other fractional TDR credits to yield one full TDR credit.
2. Maximum Density. The use of TDR credits may increase the density up to 25 percent of the maximum density permitted under the General Plan designation or zoning district classification for the eligible Receiving Area property.
3. Compliance with Development Standards. The use of TDR credits on an eligible Receiving Area property allows only for an increase in the maximum density. All other legal requirements such as development standards, fire, building and other Codes, allowable uses, and other requirements applicable to the zoning district remain in force, including but not limited to, height limitations, setbacks and yard requirements, parking standards, and open space requirements.
4. Density Bonus. The owner of an eligible Receiving Area property may use TDR credits to exceed the maximum allowable density for a property's General Plan land use designation and also may use the density bonus provision for affordable housing included in Chapter 17.15, Density Bonus. When a property owner intends to use both TDR credits and the affordable housing density bonus, the calculation of the allowable affordable housing density bonus shall be calculated before the application of TDR credits.

D. Development Agreements for Transfer of Development Rights. The application for a development agreement for the TDR, the development agreement, the review and approval process, and recordation, shall comply with the requirements of this Chapter. The following additional requirements shall also apply:

1. The application for a development agreement for the TDR shall include:
 - a. A title search completed within the six months prior to the application establishing whether the Sending Area property is subject to a deed restriction, or any other condition, covenant, or restriction that would prohibit or limit development on the property;
 - b. A copy of the TDR certification;
 - c. An agreement executed by the Sending Area property owner in favor of the City of Orange, in a form acceptable to the City Attorney, to be recorded as a deed restricting future residential development on the Sending Area property from which development rights are being severed;

- d. An agreement executed by the Sending Area property owner in favor of the City of Orange, in a form acceptable to the City Attorney, to be recorded to grant a public easement for a public trail or for a public park and open space, if any of the development rights are derived from the grant of such a public easement, pursuant to Section D(2) or D(3) above;
 - e. A project description identifying the number of residential dwelling units allowed by the General Plan land use designation and the zoning district classification of the Receiving Area lot(s) or parcel(s) and the resulting density, the number of TDR credits being applied to and retired for the proposed project, and the total number of residential dwelling units in the proposed project and the resulting density; and
 - f. Any other information deemed necessary by the Community Development Director
2. The development agreement shall identify the number and source of all development rights being used by the proposed Receiving Area property and shall indicate that the recording of the development agreement shall act to sever the development rights from the Sending Area property and vest them in the Receiving Area property.
 3. In addition to recording the development agreement in accordance with Section 17.44.150, the City Clerk shall record with the County Recorder any related deed restrictions limiting or prohibiting development on the Sending Area property, deeds conveying public easements, and deeds conveying land for public parks and open space, no later than 10 days after the City enters into the development agreement.
 4. Recording of the development agreement shall vest the development rights with the Receiving Area property. The provisions of Section 17.44.160 notwithstanding, no amendment or cancellation of the development agreement shall remove the development rights vested in the Receiving or Sending Area property. The only recourse to reallocate the development rights is to commence a new process to sever and sell the development rights and transfer them to an eligible Receiving Area property

SECTION III:

If any section, subdivision, paragraph, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subdivision, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

SECTION IV:

The City Clerk is hereby directed to certify the adoption of this Ordinance and cause the same to be published as required by law. This Ordinance shall take effect thirty (30) days from and after the date of its final passage.

APPROVED this ____ day of _____, 2024.

Daniel R. Slater, Mayor, City of Orange

ATTEST:

Pamela Coleman, City Clerk, City of Orange

APPROVED AS TO FORM:

Mike Vigliotta, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF ORANGE)

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the ____ day of _____, 2024, and thereafter at the regular meeting of said City Council duly held on the ____ day of _____, 2024 was duly passed and adopted by the following vote, to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

Pamela Coleman, City Clerk, City of Orange