



# Agenda Item

## Planning Commission

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**Item #:** 4.2.

5/6/2024

**File #:** 24-0186

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**TO:** Chair and Members of the Planning Commission

**FROM:** Anna Pehoushek, Assistant Community Development Director

### 1. SUBJECT

Public Hearing to consider an ordinance amending Chapter 17.44 of the Orange Municipal Code providing a mechanism for the transfer of development rights, and finding of CEQA exemption. (Continued from April 15, 2024).

### 2. SUMMARY

The proposed ordinance establishes provisions in the Orange Municipal Code for the transfer of development rights to sites with Urban Mixed Use zoning for purposes of creating open space and increasing housing supply in certain areas to serve the growing residential population in these zones. Additionally, the ordinance provides a mechanism for the transfer of development rights to Urban Mixed Use sites from private residentially zoned abandoned railroad right-of-way property identified in the City's General Plan Circulation Element as a future recreational trail.

### 3. RECOMMENDED ACTION

Adopt Planning Commission Resolution No. 11-24 entitled:

A Resolution of the Planning Commission recommending that the City Council approve an ordinance of the City Council of the City of Orange amending Chapter 17.44 of the Orange Municipal Code adding a new Section 17.44.210 to establish a mechanism for the transfer of development rights for purposes creating opportunities for housing, open space, and trails.

### 4. AUTHORIZING GUIDELINES

Orange Municipal Code (OMC) Section 17.08.020 authorizes the Planning Commission to review and make a recommendation to the City Council on Zoning Ordinance amendments.

### 5. PROJECT BACKGROUND

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. 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. One of the actions identified in the General Plan Implementation Plan (Implementation Program I-5) as a creative option for pursuing these priorities is the development of a transfer of development rights (TDR) program. The city's 2021-2029 Housing

Element also identifies development of a TDR ordinance as Policy Action Item 2E.

TDR programs offer a mechanism by which the un-used development potential of one property, a “sending site” (as established by General Plan land use designation) can be transferred to a “receiver site” in another location in order to preserve the characteristics of the sending site in exchange for granting additional development potential to the receiver site than would otherwise be allowed under its General Plan land use designation. The future development potential of the sending site is limited in perpetuity by a recorded deed restriction or dedication. There are a number of California cities, and cities across the nation, that have established TDR programs for purposes of open space preservation, historic preservation, housing, and economic development. Each program tends to be tailored to community-specific circumstances and priorities. In the case of Orange, a TDR program is envisioned to accommodate intensified housing development and parkland in areas of the city where land uses are planned to intensify over time, while relieve development pressure and expectations from undeveloped areas of the city that interface with wildlands and the Santiago Creek corridor. These areas often also interface with established neighborhoods and have both a sensitive environmental and development context.

In Orange, without a formal TDR ordinance in place, TDR was used in 2017 to support property reinvestment and housing integration on West Katella Avenue, through a Development Agreement development rights were transferred from a city water well property to the Garrison Apartments development to provide the density needed to make the project financially viable.

Formalizing a TDR program satisfies a portion of Housing Element Policy Action 2E and provides the city with a tool in its land use, recreation, housing, and circulation policy and program toolkit to incentivize and realize new parks, open space, housing development, and recreational trails. A TDR program enables the city to establish a clear framework for when, where, and how the transferring of development rights should occur, as well as a means for leveraging community benefits.

## **6. PROJECT DESCRIPTION**

The proposed ordinance is intended to provide a mechanism within the Orange Municipal Code to incentivize housing production and the creation of community open space and trails in targeted areas of the community through the transfer of development rights to areas of Orange where intensified development is already planned for. Property owner participation in the program would be optional and the transferring of rights would be subject to approval by the City Council on a case-by-case basis in conjunction with a development agreement as a means of leveraging other public benefits.

The objectives of the Ordinance are to:

- Incentivize residential development that complements commercial and employment hubs in Uptown Orange and along the West Katella corridor.
- Offer a pathway for the ultimate transition of privately held property that is the subject of community interest to becoming permanent public open space or a recreational trail.
- Provide a mechanism for the creation of meaningful and useable urban open space in areas of the City where future housing opportunities are concentrated.

### **Ordinance Framework**

The proposed TDR Ordinance is structured around the following concepts:

- Properties in areas of the City with the Urban Mixed Use (UMU) Zoning Districts are established “Receiving Areas” for development rights being transferred from “Sending Area” parcels.
- The transfer of development rights could achieve a maximum 25% increase in the base density established by the General Plan (60 dwelling units/acre + 25% = 75 dwelling units/acre).
- Properties established as “Sending Areas” are those that are:
  - Zoned UMU.
  - Zoned Open Space but are under private ownership, and of interest to the community for transition to long-term public open space.
  - Linear parcels between Fairhaven Avenue and Chapman Avenue under private ownership that are associated with the former railroad right-of-way, constrained by the Kinder Morgan pipeline, and envisioned in the Master Plan of Trails as the future Tustin Branch Trail alignment.
- UMU properties have dual status as both Sending and Receiving Areas in order to enable the development potential of one site to be transferred to another site for purposes of providing the opportunity to intensify housing on a receiving site and create useable urban park space to offer recreational space for the anticipated future residential population of the area.
- For non-Open Space designated sites, property owners enter into private negotiations with potential buyers to work out a mutually agreed upon sales price with the property rights transferring at a 1 to 1 ratio with the exception of the parcels involved with the Tustin Branch Trail alignment, which would be addressed by the process described in the bullet point below.
- For Open Space designated sites, there is no building intensity identified in either the General Plan or Zoning Ordinance. In order to incentivize the transition of the property to permanent open space, the ordinance would provide a mechanism for the City to grant development rights only for purposes of a TDR to a Receiving Area, and only in exchange for the Sending Area site being dedicated by the property owner as open space.

In these instances, the abutting residential General Plan land use designation would be used as a reference point for a baseline density scenario for purposes of establishing a theoretical development potential. For example, in the case of a 5-acre parcel of privately owned open space abutting a neighborhood with a Low Density Residential (LDR) (2-6 du/acre) General Plan designation the maximum density would be applied to the Open Space parcel and yield a development potential of 60 dwelling units. To further incentivize the transfer of development rights, a transfer ratio of 2 to 1 would be available. As with non-Open Space designated sites, the seller and buyer would be responsible for arriving at a mutually agreed upon price for the development rights.

A figure depicting Sending and Receiving Areas is provided in Attachment 2 of this report.

### **Development Agreement and Deed Restriction Required**

The proposed ordinance requires execution of a City Council approved Development Agreement for any TDR project. The City Council would have the ability to approve or deny any Development Agreement application for a TDR. A Development Agreement would enable the City to leverage other community benefits in exchange for the TDR. Additionally, in the case of Open Space-dedicated properties the City could, for example, include provisions for the care and maintenance of the open space over time as part of the dedication.

The Development Agreement for the TDR would require a deed restriction to be recorded on the “sending site” to document the development restriction. The City would maintain a record of the properties involved in these transactions.

## **7. ANALYSIS AND STATEMENT OF THE ISSUES**

### Issue 1: Properties Designated Resource Area

As drafted, the proposed ordinance identifies privately owned properties zoned Recreation Open Space and Single-Family Residential as qualified Sending Areas. Other undeveloped properties along Santiago Creek that may lend themselves to open space preservation are those zoned Sand and Gravel and designated as Resource Area in the General Plan. As an option, staff is seeking feedback from the Planning Commission on whether these properties should also be afforded Sending Area status in the proposed ordinance.

## **8. PUBLIC NOTICE**

On April 4, 2024 a notice was published in the Anaheim Bulletin newspaper for a public hearing before the Planning Commission on April 15, 2024. On April 15, the Planning Commission continued the public hearing to a date certain of May 6, 2024.

## **9. ENVIRONMENTAL REVIEW**

**Categorical Exemption:** This action is 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. For this reason, no further CEQA documentation is required.

## **10. ADVISORY BOARD ACTION**

None required.

## **11. ATTACHMENTS**

- Attachment 1 Planning Commission Resolution No. PC 11-24 (including Draft Ordinance)
- Attachment 2 Sending and Receiving Area Maps