

## **ORDINANCE NO. 13-22**

**AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING POLICY 1-3.1.3 “INSTITUTE A PROGRAM FOR TRANSFER OF DEVELOPMENT RIGHTS (TDRS)” OF THE COMPREHENSIVE PLAN; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON APPROVAL OF THIS ORDINANCE BY THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY**

**WHEREAS**, the Islamorada, Village of Islands Comprehensive Plan (the “Comprehensive Plan”) became effective December 6, 2001; and

**WHEREAS**, Islamorada, Village of Islands, Florida (the “Village”) finds that regulations establishing a program for the transfer of development rights (TDRs) between properties located within the Village will foster in the protection of the natural environment and community character of the Village, the protection of individual property rights, and the preservation and appropriate redevelopment of Village neighborhoods; and

**WHEREAS**, the Village desires to provide flexibility for the redistribution of residential dwelling units; and

**Whereas**, the Village desires to amend the TDR Comprehensive Plan Policy 1-3.1.3 to permit residential dwelling unit transfers from existing Mixed Use (MU) sender sites to Residential Medium (RM) or Airport (A) receiver sites; and

**WHEREAS**, the Village has conducted duly noticed public hearings for the Comprehensive Plan Amendment pursuant to Section 163.3184(15), Florida Statutes; and

**WHEREAS**, pursuant to Chapter 163.3174, Florida Statutes and Sections 30-101 of the Village Code, the Local Planning Agency publicly considered the Ordinance during a duly noticed public hearing; and

**WHEREAS**, the provisions of this Ordinance are consistent with the Village Comprehensive Plan and the principles for guiding development in the Florida Keys Area of Critical State Concern; and

**WHEREAS**, the Village Council finds that the adoption of this Ordinance is in the best interest of the Village and does comply with all applicable laws, as well as promotes the general health, safety, and welfare of the Village residents.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:**

**Section 1.**     **Recitals.** The above recitals are true and correct and incorporated herein by reference.

**Section 2.**     **Comprehensive Plan Amendment.** Policy 1-3.1.3 of the Islamorada, Village of Islands Comprehensive Plan is amended to read as follows<sup>1</sup>:

**Policy 1-3.1.3: Institute a Program for Transfer of Development Rights (TDRs).** Islamorada, Village of Islands, shall, through Land Development Regulations, maintain a program to facilitate the transfer of a variety of development rights within the Village's boundaries, to achieve the following:

1. Protect environmental resources in balance with protection of property rights;
2. Facilitate redevelopment and revitalize the Village Activity Centers by concentrating mixed use activities;

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<sup>1</sup> Additional text is shown as underlined; deleted text is shown as ~~strikethrough~~.

3. Encourage redevelopment of commercial enterprises and permit limited new commercial development;
4. Protect housing affordability and encourage provision of new affordable housing units throughout the Village;
5. Redistribute existing residential units to achieve planned densities and retire development rights without increasing the overall amount of development. Notwithstanding, in instances following the transfer of nonresidential floor area, affordable housing may be provided only through the Building Permit Allocation System on the sender site and in instances following the transfer of hotel or motel unit(s), affordable housing may be provided only through the Building Permit Allocation System and/or nonresidential floor area may be provided only through the Development Review Process as established in the Village Code on the sender site; but in neither case may the sender or receiver site exceed the permitted density or intensity;
6. Protect environmentally sensitive sites through removal of existing dwelling units or rights based on allocated densities and intensities;
7. Encourage the placement of conservation easements on environmentally sensitive or flood prone parcels of land; and
8. Further the public good and the goals, objectives and policies of the Comprehensive Plan.

The Land Development Regulations shall provide for the use of TDRs to transfer nonresidential and residential development rights. Three types of development rights may be transferable as conditional uses, as follows:

1. The transfer of density from vacant nonresidential and residential lots of record, to vacant nonresidential and residential lots of record that are non-conforming as to density, so as to permit the development of the non-conforming receiver site;
2. The off-site transfer of existing nonresidential floor area from any property, to any property located in either the Mixed Use (MU) Future Land Use Map Category and zoned for nonresidential uses or Industrial (I) Future Land Use Map Category; and
3. Off-site redevelopment of existing residential dwelling units, and of building permits for residential dwelling units.

Off-site redevelopment of all residential TDRs, including building permits for residential dwelling units shall at a minimum, be subject to the following transfer conditions:

1. Both sender and receiver sites shall be in future land use categories that permit residential uses;
2. The structure cannot be placed in a VE zone on the receiver site;
3. The receiver site shall be less environmentally sensitive than the sender site, according to a habitat analysis conducted by a certified biologist, unless otherwise exempted or limited by the Planning and Development Services Director and pursuant to habitat classifications described in Policy 6-1.7.8, whereby the following conditions apply:
  - a. Transfer shall be permitted from Class I parcels to Class II or Class III parcels;
  - b. Transfer shall be permitted from Class II parcels to Class II or Class III parcels; and
  - c. Transfer shall be permitted from Class III parcels to Class III parcels.

4. The receiver site shall be located in the same or less density restrictive Future Land Use Map category than the sender site, except that affordable residential TDR's located on a Residential High (RH) sender site may be transferable to a Residential Medium (RM) receiver site. Notwithstanding the above residential TDR dwelling unit and density restrictions, existing dwelling units located on a Mixed Use (MU) sender site may be transferable to an Airport (A) or Residential Medium (RM) receiver site provided the subject receiver site does not contain hammock and meets minimum lot area requirements;
5. Eligible receiver sites shall demonstrate compliance with all applicable criteria set forth in the Land Development Regulations;
6. Regardless of on-site allocated densities available on a parcel of land, exercising the TDR process to remove units, or transfer building permits from a parcel shall, result in a permanent reduction of density, and no additional units to those remaining on the sender site after the transfer takes place shall be permitted on the sender site. Notwithstanding, in instances following the transfer of a hotel or motel unit(s), affordable housing may be provided only through the Building Permit Allocation System and/or nonresidential floor area may be provided only through the Development Review Process as established in the Village Code, on the sender, but in no case may the sender or receiver site exceed the permitted density or intensity. Each TDR shall require that a Declaration of Covenants, Conditions and Restrictions be placed on the sender site, restricting densities to the number of units remaining on the sender site after the transfer takes place. If no density remains, a ~~Grant of Conservation Easement Agreement (GOCEA)~~ Declaration of Covenants, Conditions

and Restrictions shall be placed by the owner of the sender site on the property, restricting all further development rights; and

7. The following restrictions on residential transfers shall apply:
  - a. Hotel and motel unit TDRs shall be transferable only to hotel and motel units;
  - b. Market rate TDRs shall be transferable only to market rate units or affordable units;
  - c. Affordable TDRs, including mobile homes from approved mobile home parks, shall be transferable only as an affordable unit, in accordance with affordability standards to be adopted through the Land Development Regulations.

For all nonresidential TDR's, the off-site transfer of legally existing nonresidential floor area shall be subject to the following transfer conditions:

1. All properties designated either Mixed Use (MU) and zoned for nonresidential uses or Industrial (I) shall be eligible as sender and receiver sites for transfers of nonresidential floor area;
2. As a condition of the transfer, eligible receiver sites shall demonstrate compliance with all applicable criteria set forth in the Land Development Regulations; and
3. A Declaration of Covenants, Conditions and Restrictions shall be placed on the sender site, indicating the recorded amount of nonresidential floor area remaining following the transfer and a Grant of Conservation Easement Agreement (GOCEA) shall be placed by the owner of the sender site, prohibiting any future development on all hammock areas of the property.

**Section 3.**     **Transmittal.** Pursuant to Sections 163.3184 and 163.3187(6)(a), Florida Statutes, the Village Clerk is authorized to forward a copy of this Ordinance to the State Department of Economic Opportunity (the “DEO”).

**Section 4.**     **Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5.**     **Effective Date.** This Ordinance shall not become effective until a Notice of Intent has been issued by DEO finding the Comprehensive Plan Amendments to be in compliance as defined in Section 163.3184(1)(b), Florida Statutes. If timely challenged, the Comprehensive Plan Amendments shall not become effective until DEO or the Administration Commission enters a final order determining the adopted Comprehensive Plan Amendments to be in compliance.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

The foregoing Ordinance was offered by Councilman Purdo, who moved its adoption on first reading. This motion was seconded by Councilwoman Gillis, and upon being put to a vote, the vote was as follows:


Mayor Ken Philipson	YES
Vice Mayor Ted Blackburn	YES
Councilman Mike Forster	YES
Councilwoman Deb Gillis	YES
Councilman Dave Purdo	YES

PASSED on first reading this 11<sup>th</sup> day of April, 2013.

The foregoing Ordinance was offered by Councilman Purdo, who moved for its adoption. This motion was seconded by Councilman Mike Forster, and upon being put to a vote, the vote was as follows:

Mayor Ken Philipson	YES
Vice Mayor Ted Blackburn	YES
Councilman Mike Forster	YES
Councilwoman Deb Gillis	YES
Councilman Dave Purdo	YES

PASSED AND ADOPTED on second reading this 26<sup>th</sup> day of September, 2013.

  
KEN PHILIPSON, MAYOR

ATTEST:

  
ARIANA S. LAWSON, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND BENEFIT OF  
ISLAMORADA, VILLAGE OF ISLANDS ONLY

  
VILLAGE ATTORNEY

