

ORDINANCE NO. 20-02

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30, "LAND DEVELOPMENT REGULATIONS," ARTICLE II "RULES OF CONSTRUCTION AND DEFINITIONS" AND ARTICLE IV "ADMINISTRATIVE PROCEDURES," DIVISION 12 TRANSFERS OF DEVELOPMENT RIGHTS" OF THE VILLAGE CODE OF ORDINANCES RELATED TO TRANSFER OF RESIDENTIAL DENSITY WITHIN THE VILLAGE; AMENDING SECTION 30-32 "SPECIFIC DEFINITIONS"; SECTION 30-502 "SPECIFIC DEFINITIONS"; SECTION 30-503(1); "TRANSFER OF DEVELOPMENT RIGHTS (TDR); TO SPECIFICALLY AMEND DEFINITIONS RELATED TO TRANSFER OF RESIDENTIAL DENSITY: SECTION 30-506(1)(D) AND SECTION 30-506(3) "TRANSFER OF DEVELOPMENT RIGHTS (TDR) FOR RESIDENTIAL DWELLING UNITS AND DENSITY"; SPECIFICALLY ADDING VILLAGE CENTER (VC), TOURIST COMMERCIAL (TC), COMMERCIAL FISHING (CF), MARINE USE (MR), HIGHWAY COMMERCIAL (HC) AND NEIGHBORHOOD COMMERCIAL (NC) AS ELIGIBLE ZONING DISTRICTS FOR RECEIVING TRANSFERS OF RESIDENTIAL DENSITY FROM RESIDENTIAL SENDER SITES WITHIN ZONING DISTRICTS ELIGIBLE FOR TRANSFER OF RESIDENTIAL DENSITY; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON APPROVAL OF THIS ORDINANCE BY THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY

WHEREAS, Islamorada, Village of Islands (the "Village") has adopted a comprehensive set of Land Development Regulations (the "LDRs") to implement the Village Comprehensive Plan; and

WHEREAS, the Village seeks to define and expand the provisions within the LDRs for the Transfer of Development Rights ("TDRs") in order to facilitate the redistribution of residential density within the Village; and

WHEREAS, the Village desires to specifically amend Chapter 30 "Land Development Regulations" Article II Rules of Construction and Definitions, Sec. 30-32 "Specific Definitions;" Article IV Administrative Procedures | Division 12 Transfer of Development Rights, Sec. 30-502 "Specific Definitions:" Sec. 30-503(1), "Transfer of Development Rights (TDR)"; Sec. 30-506(1)(D) and Sec. 30-506(3) "Transfer of Development Rights (TDRs) for Residential Dwelling Units and Density," and

WHEREAS, the proposed amendments would add definitions, clarify how to transfer residential density and allow Village Center (VC), Tourist Commercial (TC), Commercial Fishing (CF), Marine Use (MR), Highway Commercial (HC) and Neighborhood Commercial (NC) as eligible zoning districts for receiving transfers of residential density from residential sender sites within zoning districts eligible for transfer of density; and

WHEREAS, the provisions of this Ordinance are consistent with the Village Comprehensive Plan and the Principles for Guiding Development within the Florida Keys Area of Critical State Concern; and

WHEREAS, the Village Council of Islamorada, Village of Islands (the "Village Council") finds that the provisions of this Ordinance are intended to advance the public health, safety, and welfare of the citizens of the Village.

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, correct and incorporated herein by this reference.

Section 2. Amending Specific Definitions. Chapter 30 "Land Development

Regulations" Article II Rules of Construction and Definitions, Sec. 30-32 "Specific Definitions;" Article IV Administrative Procedures | Division 12 Transfer of Development Rights, Sec. 30-502 "Specific Definitions;" Sec. 30-503(1), "Transfer of Development Rights (TDR)"; Sec. 30-506(1)(D) and Sec. 30-506(3) "Transfer of Development Rights (TDRs) for Residential Dwelling Units and Density," of the Code are hereby amended to read as follows:

Additional text is shown as underlined;

deleted text is shown as ~~strikethrough~~

Sec. 30-32. – Specific definitions.

Words as used in this chapter shall have the meaning, described below, unless otherwise defined in another article, division, section or paragraph of this chapter:

Acre: a parcel of upland or submerged land which has horizontal plane area of forty-three thousand five hundred sixty (43,560) square feet.

~~Gross~~ Acre, ~~gross~~ means the total horizontal plane area ~~acreage~~ of a site excluding submerged lands, tidally inundated mangroves, not to exceed mean high tide, and any publicly dedicated rights-of-way.

Acre, net upland: means the total horizontal plane area of a site excluding submerged lands, tidally inundated mangroves, not to exceed the mean high-water line (MHWL), and any publicly dedicated rights-of-way.

Area, buildable: is the upland portion of a lot or parcel of land that can be occupied by principal buildings and such accessory buildings or uses customarily incidental to it, exclusive of any public dedications, privately owned submerged lands and tidally inundated mangroves.

~~Gross~~-Area, ~~gross~~: means the total area of a site ~~less~~ exclusive of any public dedicated rights-of-way but including privately owned submerged lands and any tidally inundated mangroves, ~~dedicated public rights-of-way~~.

Area, lot: is the total horizontal plane area contained within the lot lines expressed in square feet or acres, exclusive of any public dedications but including privately owned submerged lands and tidally inundated mangroves.

Density, residential (zoning): are densities on the official zoning map as defined by Article V. Division 2 – Zoning Districts as the number of dwelling units per net upland acreage or the number of dwelling units per lot pursuant to the minimum lot area standard of the zoning district.

Density, off-site residential: are densities in the amount of area, expressed in acreage or square footage, that can be transferred from a sender site and credited to a receiver site.

Density, maximum off-site residential: the maximum amount of transferable area of off-site residential density that can be transferred from a sender site and credited to a receiver site that is calculated by and equal to the pre-existing lot area of the receiver site, expressed in acreage or square footage, prior to any transfer, that can be credited to the receiver site.

Lot line: is the legal boundary of a lot.

Mean high-water line (MHWL): means the intersection of the tidal plane of mean high water with the shore. [F.S. § 177.27(15)]

Transferred Residential Density Credit (TRDC): a development right in the form of off-site residential density that has been successfully transferred and officially credited to a receiver site.

Upland: defined as land above the mean high-water line (MHWL). Upland shall include disturbed wetlands that have been lawfully converted into uplands through filling. [F.S. § 163.3177(6)d.2.j., k.]

Sec. 30-502. – Specific definitions.

The words and phrases in this division shall have the meanings prescribed in this division, except as otherwise defined below:

Density, off-site residential: are densities in the amount of area, expressed in acreage or square footage, that can be transferred from a sender site and credited to a receiver site.

Density, maximum off-site residential: the maximum amount of transferable area of off-site residential density that can be transferred from a sender site and credited to a receiver site that is calculated by and equal to the pre-existing lot area of the receiver site, expressed in acreage or square footage, prior to any transfer, that can be credited to the receiver site.

Transferred Residential Density Credit (TRDC): a development right in the form of off-site residential density that has been successfully transferred and officially credited to a receiver site.

Sec. 30-503. – Transfer of development rights (TDRs).

The types of development rights that may be transferable are limited to the following activities:

- (1) Intensity and Density: The transfer of intensity (FAR) from vacant nonresidential and density from residential sender sites to vacant nonresidential and ~~vacant~~ residential receiver sites that meet the minimum lot area size but are nonconforming as to density, so as to permit the development of the receiver site.
 - a. Receiver sites within mixed-use zoning districts are only permitted to apply off-site residential density to the residential component of a development. The transfer of off-site residential density shall not constitute a mechanism to increase the allowable number of dwelling units per acre on a receiver site.
- (2) Non-Residential Floor Area: The off-site transfer of existing nonresidential floor area from any lot to any other lot, whereby the following conditions apply:
 - a. The following zoning districts are eligible as sender sites: VC+, TC, CF, MR, HC, NC, I, C, PS, R and M*; and
 - b. The following zoning districts are eligible as receiver sites: VC+, TC, CF, MR, HC, NC, I, PS, R and M*.

*Mariculture (M) zoning district is only eligible as a sender and receiver site if located within the industrial (I) FLUM category. +Village center (VC) zoning district is only eligible as a sender site when the receiver site is within the village center (VC) zoning district.
- (3) Residential Dwelling Units: The off-site transfer and redevelopment of existing residential dwelling units, Transferable ROGO Exemption (TRE) Certificates and the off-site transfer of building permits for residential dwelling units. Development or redevelopment of additional residential dwelling units shall only be permitted within specifically denoted zoning districts following the successful transfer of residential dwelling units to eligible receiver sites.

Sec. 30-506. – Transfer of development rights (TDRs) for residential dwelling units and density.

Sec. 30-506(1)(d). the transfer of residential density off-site shall be in the amount of 0.25 per acre and in conformance with the permitted zoning districts in the following table:

Residential Sender Sites	Zoning Districts Eligible as Receiver Sites
Conservation (C)	NR, RE, R1, R1M, RMH, R2, R3, R4, MF, MH, SR, TA, <u>VC, TC, CF, MR, HC, NC</u>
Native Residential (NR)	NR, RE, R1, R1M, RMH, R2, R3, R4, MF, MH, SR, TA, <u>VC, TC, CF, MR, HC, NC</u>
Residential Estate (RE)	RE, R1, R1M, RMH, R2, R3, R4, MF, MH, SR, TA, <u>VC, TC, CF, MR, HC, NC</u>
Residential Single Family (R1) and (R1M)	R1, R1M, RMH, R2, R3, R4, MF, MH, SR, TA, <u>VC, TC, CF, MR, HC, NC</u>
Residential Mobile Home (RMH)	R1, R1M, RMH, R2, R3, R4, MF, MH, SR, TA, <u>VC, TC, CF, MR, HC, NC</u>
Residential Duplex (R2)	R2, R3, R4, MF, MH, SR, TA, <u>VC, TC, CF, MR, HC, NC</u>
Residential Triplex (R3)	R3, R4, MF, MH, SR, TA, <u>VC, TC, CF, MR, HC, NC</u>
Residential Fourplex (R4)	R4, MF, MH, SR, TA, <u>VC, TC, CF, MR, HC, NC</u>
Multifamily (MF)	R1**, R1M**, R2**, R3**, R4**, MF, MH, SR, TA, <u>VC, TC, CF, MR, HC, NC</u>
Mobile Home Park (MH)	R1**, R1M**, R2**, R3**, R4**, MH**, SR**, <u>VC**, TC**, CF**, MR**, HC**, NC**</u>
Settlers Residential (SR)+	R1, R1M, RMH, R2, R3, R4, MF, MH, SR, TA, <u>VC, TC, CF, MR, HC, NC</u>
Tavernaero Airstrip (TA)	MF, MH, SR, TA, <u>VC, TC, CF, MR, HC, NC</u>

~~*Limited to a caretaker's cottage.~~

**Limited to affordable residential dwelling unit.

+ Limited to lots of record within Residential Medium Use FLUM.

Note: Receiver sites within mixed-use zoning districts are only permitted to apply off-site residential density to the residential component of a development.

Sec. 30-506(3). Development of ~~the~~ a receiver site shall not exceed the greater of either one market rate dwelling unit or the densities provided for within division 2 of article V of this chapter. Additionally, the maximum amount of transferable area of off-site residential density that can be transferred from a sender site and credited to a receiver site is calculated by and equal to the pre-existing lot area of the receiver site, expressed in acreage or square footage, prior to any transfer, that can be credited to the receiver site. A development right in the form of off-site residential density that has been successfully transferred and officially credited to a receiver site is known as Transferred Residential Density Credit (TRDC).

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance is 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 4. Repeal of Conflicting Provisions. The provisions of the Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 5. Inclusion in the Code. It is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become a part of the Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Transmittal to the Florida Department of Economic Opportunity. The provisions of this Ordinance constitute a "land development regulation" as State law defines that term. Accordingly, the Village Clerk is authorized to forward a copy of this Ordinance to the Florida Department of Economic Opportunity ("DEO") for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

Section 7. Effective Date. This Ordinance shall not be effective until approved pursuant to a final order by DEO, pursuant to Chapter 380.05, Florida Statutes; or if the final order is challenged, until the challenge to the order is resolved pursuant to Chapter 120, Florida Statutes.

The foregoing Ordinance was offered by Vice Mayor Ken Davis, who moved for its adoption on first reading. This motion was seconded by Councilwoman Deb Gillis, and upon being put to a vote, the vote was as follows:

Mayor Mike Forster	YES
Vice Mayor Ken Davis	YES
Councilwoman Deb Gillis	YES
Councilman Jim Mooney	YES
Councilman Chris Sante	ABSTAINED

PASSED on the first reading this 7th day of May, 2020.

The foregoing Ordinance was offered by Councilwoman Deb Gillis, who moved for its adoption on second reading. This motion was seconded by Vice Mayor Ken Davis, and upon being put to a vote, the vote was as follows:

Mayor Mike Forster	YES
Vice Mayor Ken Davis	YES
Councilwoman Deb Gillis	YES
Councilman Jim Mooney	YES
Councilman Chris Sante	ABSTAINED

PASSED AND ADOPTED on the second reading this 16th day of July, 2020.



MIKE FORSTER, MAYOR

ATTEST:



KELLY TOTH, VILLAGE CLERK

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



ROGET V. BRYAN, VILLAGE ATTORNEY