

ORDINANCE NO. 2023-2268

AN ORDINANCE OF THE CITY OF NEW PORT RICHEY, FLORIDA, PROVIDING FOR AMENDMENT OF CHAPTER 20 OF THE LAND DEVELOPMENT CODE, PERTAINING TO THE COASTAL TRANSFER OF DEVELOPMENT RIGHTS PROGRAM; PROVIDING FOR THE EXPANSION OF SENDING SITES TO PRIVATELY OWNED PROPERTIES; PROVIDING FOR THE CALCULATION OF THE VALUE OF DEVELOPMENT CREDITS BY THE CITY COUNCIL; PROVIDING FOR PLANNED DEVELOPMENT DISTRICT (PDD) APPROVAL; PROVIDING FOR REMOVAL OF THE REQUIREMENT FOR CONDITIONAL USE PERMITS; PROVIDING FOR EXPANSION OF RECEIVING SITES TO ALL PROPERTY WITHIN THE CITY; PROVIDING FOR PROCEDURES; AND PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of New Port Richey' Comprehensive and Land Development Code provide for the Coastal Transfer of Development Rights to manage growth and protect environmentally sensitive lands;

WHEREAS, the sending sites located within the Coastal High Hazard Area are limited to city-owned lands;

WHEREAS, the City of New Port Richey desires to expand the eligibility of sending sites to private land owners to further achieve the goal of managing growth and protecting environmentally sensitive lands in the Coastal High Hazard Area;

WHEREAS, the receiving sites are limited to lands within the Coastal High Hazard Area;

WHEREAS, the City of New Port Richey desires to expand the eligibility of receiving sites to lands within the corporate limits of the city to further protect environmentally sensitive lands;

WHEREAS, the calculation of the value of the development rights is based on an appraisal of the receiving site;

WHEREAS, the City Council wishes to establish the value of the TDR credits based upon the value to either the receiving or sending site as appropriate and other market factors that may apply;

WHEREAS, requiring PDD zoning approval as condition of participation in the TDR program provides for greater control over the impacts of the program on surrounding properties and is preferable to the conditional use permit process;

WHEREAS, it is determined that to protect the health, safety, and welfare of the citizens of New Port Richey, amendments to the Coastal Transfer of Development Rights Program are required;

WHEREAS, notice of this Ordinance has been provided as required by applicable law; and

WHEREAS, the New Port Richey City Council finds it necessary to implement these regulations to promote the health, safety, and welfare of the citizens of New Port Richey.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW PORT RICHEY, FLORIDA:

SECTION 1. Chapter 20, of the New Port Richey Land Development Code, pertaining to Coastal Transfer of Development Rights, is hereby amended as follows (strikeout text is deleted and underlined text is added):

CHAPTER 20. - COASTAL TRANSFER OF DEVELOPMENT RIGHTS PROGRAM

20.01.00 - Purpose and intent.

The purpose of this chapter is to provide a Coastal Transfer of Development Rights Program. This program shall:

1. Assist in the redevelopment of the Coastal High Hazard Area (hereafter referred to as "CHHA") of the city;
2. Protect environmentally-sensitive lands within the CHHA;
3. Redistribute residential development rights allocated by the Future Land Use Map (hereafter referred to as "FLUM") ~~to achieve the requirements of Rule 9J-5012, Florida Administrative Code~~ within the CHHA;
4. Redistribute residential development rights allocated by the FLUM to achieve growth management goals of the city; and
5. Implement hazard mitigation strategies.

20.02.00 - Definitions.

Base density. The maximum number of dwelling units possible, per acre, on a parcel of land based on the future land use map (FLUM) designation in the comprehensive plan and zoning district.

Build-out date. The date by which the final certificate of occupancy of the final residential unit is issued.

Bonus density. The additional number of dwelling units permitted on a parcel of land, beyond the maximum possible as determined by the proposed underlying future land use category.

Coastal high hazard area (CHHA). The coastal high hazard area is the area below the elevation of the category 1 storm surge line as established by a sea, lake and overland surges from hurricanes (SLOSH) computerized storm surge model.

Conceptual building elevation plan. A conceptual building elevation plan includes a drawing that shows the profile of buildings including building materials and colors.

Coastal transfer of development rights ~~conditional use permit~~ Planned Development District zoning (PDD). A coastal transfer of development rights PDD approval ~~conditional use permit~~ is the final development order issued by the City of New Port Richey for participation in the coastal transfer of development rights program. This coastal transfer of development rights PDD approval ~~conditional use permit~~ is site specific, project specific and shall ~~can~~ not be transferred to another site. Modifications to the coastal transfer of development rights ~~conditional use permit~~ PDD approval shall be approved by the City of New Port Richey pursuant to the requirements herein and the requirements for PDD approval set forth in the Land Development Code.

Conservation easement. A deed restriction placed on property that restricts its owner to specific limited uses of the property, typically conservation or passive recreation and open space.

Deed restriction. A legal document, recorded by the Pasco County Clerk of the Circuit Court, describing restricted activities on a sending site, which may or may not include a conservation easement.

Major modification to ~~conditional use permit~~ PDD. Major modifications to the ~~conditional use permit~~ PDD approval are all those modifications that are not classified as minor modifications in this code. Examples include: changes increase in density,; building height,; and/or change in architectural design, color, or building materials.

Minor modification to ~~conditional use permit~~ PDD. A nominal deviation from the approved plan, provided it will not change increase the permitted density and ~~that~~ the proposal remains consistent with the original design, intent and developer commitments of the adopted plan. Examples include: adjustments in the location of building footprints and parking lots, provided setbacks and buffers remain in compliance,; redesigning and/or relocating stormwater management facilities and amenities,; and changes in the landscaping plan relating to (substitution of materials).

Planned Development Zoning District (PDD). The zoning district provided in this code providing site specific development standards.

Receiving areas. An area within which development rights transferred from a TDR sending area can be used as shown on the map specified "Receiving Area" in Exhibit A [Exhibit A is on file and available for inspection in the office of the city clerk]. These areas have available infrastructure and services that can accommodate higher density development. Receiving areas are only included within the corporate limits ~~area~~ of New Port Richey ~~designated as the CHHA~~.

Receiving site. An eligible property located within the ~~coastal high hazard area~~ corporate limits of New Port Richey. Eligibility shall be determined by the criteria established in this chapter.

Sending area. The area from which development rights on CHHA ~~city-owned~~ lands may be severed as shown on the FLUM ~~future land use map #2~~, entitled TDR sending areas [Future land use maps are on file and available for inspection in the office of the city clerk]. All sending areas shall require a deed restriction, covenant running with the land, "land use restriction agreement", or other appropriate instrument between the City of New Port Richey and the applicant.

Sending site. An eligible CHHA ~~city-owned~~ property located within the sending area.

Transfer of development rights (TDR). The conveyance of development rights by deed, covenant, easement or other legal instrument authorized by local law to another parcel of land and recordation of that conveyance.

Transfer of development right credit. A development right credit which has been severed or extinguished from a sending site by deed restriction, covenant, conservation easement, or other legal instrument authorized by law and the recording of that instrument, and which is transferable to a specified receiving area.

Transfer of development rights entitlement bank. The holding area for development rights that have been severed from CHHA ~~city-owned~~ lands and are to be sold as part of a PDD approval conditional use permit.

Transfer of development right certificate. A certificate issued by the City of New Port Richey evidencing the legal right of the holder to use such certificate to obtain additional density on a receiving site, subject to and in accordance with this article. Once issued, this certificate is non-transferable to another parcel of land.

20.03.00 - Permitted uses.

1. Lands designated as transfer of development rights sending areas shall be used only for the permitted principle and accessory uses authorized herein and as permitted in the ~~zoning district~~ PDD approval for the subject site.

2. Lands designated as transfer of development rights receiving areas shall be used only for the permitted principle and accessory uses authorized under the ~~zoning classification, and the additional permitted uses authorized pursuant to the conditional approval~~ PDD approval.

34. *Uses permitted in sending areas.* Sending lands shall be used for public parks, flood control and mitigation, open spaces and appropriate redevelopment projects as determined by the city. Sending sites shall be designated with non-residential land uses.

42. *Uses permitted in receiving areas.* Receiving areas shall be used for residential development and mixed-use development, consistent with the underlying future land use map category.

53. *Accessory uses in receiving areas.* Any permitted accessory use which is an allowable accessory use under the zoning district is permitted, and ~~of~~ uses authorized pursuant to the ~~conditional use~~ PDD approval.

20.04.00 - Conditional use permit and site plan Planned Development District Rezoning required.

A Planned Development District (PDD) rezoning allowing TDRs as a condition of the rezoning conditional use approval is required for participation in the coastal TDR program. The application for a PDD approval conditional use shall be subject to the requirements of section 5.02.01 for special exceptions and conditional uses 5.01.00 for rezonings, as well as, the requirements established in section 21.05.00 below.

~~1. General requirements: The property owner or his legally designated agent shall apply for and receive approval of a conditional use permit approved by the city council, as provided in section 5.02.01, and the requirements established in this part. The applicant shall also apply for and receive approval of a preliminary site plan meeting the requirements of section 3.11.03 and the requirements established in this part. Additionally, the applicant shall be required to enter into a development agreement, as provided in section 3.11.04, as part of the conditional use approval process specifying the formal commitments for the provision of needed infrastructure and services.~~

~~2. Procedures for conditional use permit.~~

~~a. Pre-application conference: Prior to filing a petition for transfer of development rights and an application for a conditional use permit and preliminary site plan, the petitioner shall request and hold a pre-application conference with the community development director and appropriate city staff. The pre-application conference is for the purpose of guidance and information, and for ensuring that the petition, and subsequent application, is in conformity with these regulations.~~

~~b. Procedure for approval of a conditional use permit for use of TDRs:~~

~~1. Application requirements: An application for a conditional use permit together with a preliminary site plan and development agreement shall be submitted to the community development director who shall forward it to the DRC. The conditional use permit shall also include a draft development agreement consistent with the requirements of section 3.11.04. The city staff shall review the application to determine that the application is complete and all required data is included. If the application is not complete, the petitioner shall supplement the application, as needed, to provide the necessary information before the application can be processed for substantive review.~~

~~2. Application submittal requirements: Application submittal requirements shall include at a minimum:~~

- ~~○ Name, address of applicant;~~
- ~~○ Conditional use application (signed and notarized) including name and address of applicant and applicant's representative, if any;~~
- ~~○ Project narrative, at minimum, describing conceptual building elevations, type and color and finish of materials, design and architectural style and quality of development;~~
- ~~○ Preliminary site plan;~~

- ~~○ Conceptual building elevation plans;~~
- ~~○ List and schedule for capital improvements necessary (if any) to maintain level of service and concurrency standards;~~
- ~~○ \$1,500.00 processing fee (non-refundable);~~
- ~~○ Number of requested development rights;~~
- ~~○ Draft development agreement including proposed development schedule and timing of development phasing;~~
- ~~○ Future land use amendment for receiving site (city will prepare same for sending site);~~
- ~~○ A narrative on how the project will address the goals, objectives and policies of the City of New Port Richey Redevelopment Plan; and~~
- ~~○ A narrative on how the goals, objectives and policy'sies of the City of New Port Richey Comprehensive Plan are addressed.~~

~~3. *Review of conditional use permit and preliminary site plan:* Once the application is determined to be complete, the application will be scheduled for review by the development review committee. The DRC shall recommend approval, approval with conditions, or denial, to the city council. If the recommendation is for denial, the DRC shall recommend any corrective actions required for approval or approval with conditions.~~

~~4. *Required public hearing:* A public hearing by city council is required for consideration of public comments on the conditional use permit, preliminary site plan and development agreement. If the DRC recommends denial of the application, the applicant will need to modify the application to address any corrective actions required for approval or approval with conditions prior to the applicant proceeding to the required hearing by city council.~~

~~c. *Procedure for final approval of a conditional use permit for use of TDRs:*~~

~~1. *Application requirements:* An application for a conditional use permit together with a final site plan and final development agreement shall be submitted to the community development director who shall forward it to the DRC. The city staff shall review the application to determine that the application is complete and all required data is included. If the application is not complete, the petitioner shall supplement the application, as needed, to provide the necessary information before the application can be processed for substantive review.~~

~~2. *Final requirements for conditional use permit:*~~

- ~~○ Conditional use application (signed and notarized) including name and address of applicant and applicant's representative, if any;~~
- ~~○ Schedule for capital improvements necessary (if any) to maintain the adopted level of service to meet concurrency requirements (including proportionate share provisions);~~
- ~~○ Surety fee (ten (10) percent, non-refundable);~~

- ~~○ A build-out date of the development (at which time development entitlements are deposited back into the city entitlement bank, if unused);~~
- ~~○ Final application including all supporting information;~~
- ~~○ Final development agreement;~~
- ~~○ Final site plan; and~~
- ~~○ Final architectural plan with elevations.~~

~~3. *Review of conditional use permit and final site plan:* Once the application is determined to be complete, the application will be scheduled for review by the development review committee. The DRC shall recommend approval, approval with conditions, or denial, to the city council. If the recommendation is for denial, the DRC shall recommend any corrective actions required for approval or approval with conditions.~~

~~4. *Required public hearing:* A public hearing by city council is required for consideration of public comments on the conditional use permit, final plan and development agreement. If the DRC recommends denial of the application, the applicant will need to modify the application to address any corrective actions required for approval or approval with conditions prior to the applicant proceeding to the required hearing by city council.~~

20.05.00 – Modifications to conditional use permit.

~~Changes to the conditional use permit shall be reviewed by the DRC. The DRC shall recommend approval or denial of the modified conditional use permit. If the DRC recommends denial of the application, the applicant will need to modify the application to address any corrective actions required for approval or approval with conditions prior to the applicant proceeding to schedule the required public hearing, pursuant to section 21.04.2.C.1-4. Minor modifications to the conditional use permit will be regulated as indicated under the definitions section.~~

Sec. 20.056.00 - Transfer of residential development rights.

~~1. *TDR entitlement bank.* Transfers of development rights are made from CHHA ~~city-owned~~ lands (sending areas) to the entitlement bank. The city shall maintain an inventory of transferable development rights in the entitlement bank. The ~~city~~ City Council shall establish the reasonable cost value of TDR credits maintained in the entitlement bank by ~~obtaining an appraisal of the receiving site prepared by a State Certified General Appraiser to be reviewed by the Community Redevelopment Agency and approved by the City Council for the establishment of the final cost determined at~~ its the discretion of the City Council.~~

~~2. *Future land use map (FLUM) amendment required for sending site:* The future land use map amendment shall change the FLUM category on the sending ~~sites~~ lands to conservation, preservation, public facility or other non-residential category. A future land use map amendment is required to sever development rights from CHHA ~~city-owned~~ land for transfer into the city entitlement bank. Future land use amendments will be processed as required under Florida Statutes. A covenant running with the land, deed restriction or~~

conservation easement shall be recorded evidencing the severance of the development rights from the sending site, unless the same is owned by the city.

32. Future land use map (FLUM) amendment required for receiving ~~site lands~~: A future land use map amendment is required for all receiving sites:

- a. That do not permit residential development at the time of application for the PDD approval ~~conditional use permit~~; or
- b. Where residential density is proposed to be increased, the proposed ~~conditional use permit~~ PDD rezoning shall be included as part of the data and analysis supporting the proposed FLUM amendment.

43. Maximum number of TDR credits to be transferred: The maximum number of TDR credits transferred from sending areas to receiving areas shall not exceed the maximum number of residential units permitted by the future land use map designation and zoning district classifications for the sending area.

20.076.00 - Procedure for obtaining transfer of residential development rights.

1. The petitioner shall submit a request to the city to obtain transfer of residential development rights.

21. Intent to issue ~~deed of transfer certificate~~: Once an agreement has been reached on the pricing of the TDR's, the city shall provide an intent to issue a certificate deed of transfer of ownership of development rights (or other appropriate instrument) pending PDD conditional use and site plan approvals.

32. Issuance of ~~certificate deed~~: Upon city approval of PDD conditional use permit, final site plan, elevations, future land use plan amendments and rezoning for the receiving site and receipt of payment from the petitioner, the city shall issue the certificate deed of transfer of ownership of development rights (or other appropriate instrument).

43. Recording of ~~instruments deed~~: All instruments deeds of transfer of ownership of development rights shall be recorded with the Pasco County Clerk of the Circuit Court, together with a covenant running with the land, deed restriction or conservation easement that the development rights have been severed or extinguished from the sending site. No such instrument shall be required for sending sites owned by the city unless approved by the City Council.

54. Use of funds: The monies from the sale of the development rights shall be used for acquisition of land for private redevelopment purposes and to implement the intent of this section.

65. Timing of payment for TDR credit: The TDR credit must be paid at the time of issuance of the first building permit.

20.087.00 - Comprehensive plan amendment and zoning amendment required.

~~1. Prior to the effective date of the coastal TDR conditional use permit PDD approval, any required comprehensive plan future land use map (FLUM) amendment shall be adopted by the City of New Port Richey for the receiving site and be found in compliance by the Florida Department of Community Affairs Economic Opportunity. This FLUM amendment may be is required to allow for new or increased residential development on the receiving lands. This shall be processed as required under Florida Statutes.~~

~~2. Prior to the effective date of the conditional use permit, a zoning amendment shall be adopted by the City of New Port Richey for the receiving site that is consistent with the underlying land use. This shall be processed as required under Florida Statutes and chapter 5 of the land development code.~~

20.098.00 - Development standards.

~~1. *Appropriate zoning districts:* The zoning classification PDD approval of the receiving site shall include residential development as a permitted use.~~

~~2. *Availability/provision of infrastructure:* All required infrastructure shall be provided by the developer of the property. The city shall limit public expenditures that subsidize development in the coastal high hazard area.~~

~~3. *Compatibility of use:* The burden of proof to demonstrate compatibility shall be on is required of the applicant. Compatibility determination shall consider use, density, and intensity, scale, and impact, building materials and color of materials.~~

~~4. *Certificate of transfer of development rights:* A certificate of transfer of development rights shall be included as part of the conditional use permit PDD approval. A certificate of transfer of density credits shall be issued by the city to the applicant upon the effective date of the conditional use permit PDD approval.~~

20.10.00 - Effective date.

~~1. The effective date of the conditional use permit PDD approval shall be the effective date of the comprehensive plan amendment that changes the FLUM category on the receiving site.~~

~~2. The effective date of the sending site is the effective date of the comprehensive plan amendment that changes the FLUM category on the receiving site.~~

~~3. The effective date of the receiving site is the effective date of the comprehensive plan amendment that changes the FLUM category on the receiving site.~~

20.109.00 - Time limitations on authorization to proceed with building permit or construction permit.

The failure to act on the part of the petitioner to exercise the transfer of development rights or obtain the required building permits within time period specified by the conditional use permit

PDD approval (commencement date) shall render the permit void. The city shall be held harmless for any damages arising out of petitioner's failure to act. If the ~~econditional-use permit~~ PDD approval is deemed to be void, then the applicant's funds for the purchase of the development entitlements shall be refunded minus ten (10) percent for administrative fees.

20.120.00 - Appeal procedures.

Any person aggrieved by any decision or interpretation made by the community development director may appeal such grievance as provided by law.

SECTION 2. If any phrase or portion of this Ordinance, or the particular application thereof, shall be held invalid or unconstitutional by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases and their application shall not be affected thereby.

SECTION 3. Any ordinances, or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall be codified and made a part of the New Port Richey City Code, and that the sections of this Ordinance may be renumbered to accomplish such codification, and that the word Ordinance may be changed to "section" to accomplish such codification.

SECTION 5. This Ordinance shall become effective immediately upon its adoption as provided by law.

The above and foregoing Ordinance was read and approved on first reading at duly convened meeting of the City Council of the City of New Port Richey, Florida this ____ day of _____, 2023.

The above and foregoing Ordinance was read and approved on second reading at duly convened meeting of the City Council of the City of New Port Richey, Florida this ____ day of _____, 2023.

ATTEST:

Judy Meyers, City Clerk

Rob Marlowe, Mayor-Council Member

(Seal)

APPROVED AS TO FORM

By: _____
Timothy P. Driscoll, City Attorney CA Approved 1-12-23