

**ORDINANCE NO. 14-11**

**AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30 “LAND DEVELOPMENT REGULATIONS,” ARTICLE IV “ADMINISTRATIVE PROCEDURES,” DIVISION 12 “TRANSFER OF DEVELOPMENT RIGHTS,” OF THE VILLAGE CODE OF ORDINANCES; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THE PROVISIONS OF THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY**

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

**WHEREAS**, the Village Council desires to amend Chapter 30 “Land Development Regulations,” Article IV “Administrative Procedures,” Division 12 “Transfer of Development Rights,” of the Village Code of Ordinances (the “Code”); and

**WHEREAS**, the Village Council finds that regulations regarding transfer of development rights (TDRs) between properties within the Village 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 existing residential dwelling units; and

**WHEREAS**, the Village has limited residential building permit allocations; and

**Whereas**, the Village has amended the TDR Comprehensive Plan Policy 1-3.1.4 to permit residential dwelling unit and density transfers from existing Mixed Use (MU) sender sites to Residential Low (RL), Residential Medium (RM) or Airport (A) receiver sites; and

**WHEREAS**, the Local Planning Agency has reviewed this Ordinance in accordance with the requirements of Chapter 163, Florida Statutes; and

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

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

**Section 1.** **Transfer of Development Rights.** Chapter 30 “Land Development Regulations,” Article IV “Administrative Procedures,” Division 12 “Transfer of Development Rights,” of the Code is hereby amended to read as follows<sup>1</sup>:

DIVISION 12. TRANSFER OF DEVELOPMENT RIGHTS

**Section 30-501. Intent and purpose.**

The intent and purpose of this division is to permit and regulate the transfer of development rights (TDRs) between properties within the Village in order to ensure that all development is consistent with the goals, objectives and policies of the Comprehensive Plan. Transfer of development rights will aid in the preservation of environmentally sensitive lands through the removal of existing dwelling units or rights based on permitted densities, the redistribution of existing residential dwelling units to achieve planned densities, the retirement of development rights without increasing the overall amount of development, the encouragement of the

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

placement of conservation easements on environmentally sensitive and flood-prone lands, the facilitation of appropriate redevelopment and revitalization of the village center (VC) zoning district by the concentration of mixed use activities, the preservation of existing affordable housing and encouragement of additional affordable housing, and a reduction of negative environmental impacts from development in balance with protection of private property rights.

### **Section 30-502. Specific Definitions.**

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

*Off-site* means outside the limits of the area encompassed by the lot where a permitted activity is conducted.

*Receiver site* means the designated lot to which development rights, density, or floor area may be transferred from a lot designated as a sender site.

*Sender site* means the designated lot from which development rights, density, or floor area may be severed to be transferred to a lot designated as a receiver site.

*Transfer of development rights* means the process by which development rights may be transferred from one lot within the Village to another lot within the Village.

### **Section 30-503. Transfer of Development Rights (TDRs).**

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

- (1) The transfer of ~~floor area~~ intensity from vacant nonresidential and density from residential sender sites to vacant nonresidential and vacant residential receiver sites that

meet minimum lot size but are nonconforming as to density, so as to permit the development of the receiver site.

(2) 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) The off-site transfer and redevelopment of existing residential dwelling units, and the off-site transfer of building permits for residential dwelling units.

### **Section 30-504. Transfer Procedure.**

(a) The applicant(s) must provide documentation of ownership of sender and receiver sites through the form of a deed or other legal documentation as approved by the village attorney. For the purposes of this division, sender site and receiver site shall mean those parcels of land as they legally existed on November 29, 2007.

(b) The receiver site shall be less environmentally sensitive than the sender site, according to a vegetation survey and/or a habitat analysis conducted by a certified biologist, and verified unless otherwise exempted or limited by the director of planning and development services or

his designee, pursuant to habitat classifications described in subsection 30-1616(b)(2) of this Code, whereby the following conditions additionally apply:

- (1) Transfer shall be permitted from Class I parcels to Class II or Class III parcels;
- (2) Transfer shall be permitted from Class II parcels to Class II or Class III parcels; and
- (3) Transfer shall be permitted from Class III parcels to Class III parcels.

(c) Eligible receiver sites shall demonstrate compliance with all applicable criteria set forth in this chapter.

(d) An application for transfer of development rights shall be submitted to the director of planning and development services, in accordance with the provisions of this section, accompanied by a cost recovery fee as established, and may be amended by resolution, by the village council. The application shall contain the information required on a form provided by the director of planning and development services.

(e) No application for transfer of development rights (TDRs) shall be processed if the sender or receiver site has any open permits or active code violations; all bonds, assessments, back village taxes, fees and liens (other than mortgages) affecting the lot(s) shall be paid in full prior to approval of transfer of development rights.

(f) After the review and recommendation by the development review committee (DRC), the director of planning and development services and/or the village council, in accordance with the procedures, standards and limitations of this chapter, shall approve, approve with conditions, or deny an application for transfer of development rights (TDRs).

**Section 30-505. Transfer of development rights (TDRs) for nonresidential floor area.**

The off-site transfer of legally existing nonresidential floor area shall be subject to the following transfer conditions:

- (1) The transfer of 4,999 square feet of nonresidential floor area or less shall be reviewed using the procedures for minor conditional use review pursuant to section 30-217 and shall be noticed pursuant to the procedures in section 30-213(h).
- (2) The transfer of 5,000 square feet of nonresidential floor area or more shall be reviewed using the procedures for major conditional use review pursuant to section 30-218 and shall be noticed pursuant to the procedures in section 30-213(i).
- (3) The amount of nonresidential floor area transferred off-site shall be limited to that amount which exceeds the maximum floor area allowed on the sender site pursuant to division 2 of article V of this chapter.
- (4) Both sender and receiver sites shall be in zoning districts that permit nonresidential floor area and shall be subject to the following restrictions:

<b>Nonresidential Sender Sites</b>	<b>Zoning Districts Eligible as Receiver Sites</b>
Village Center (VC)+	VC
Tourist Commercial (TC)	VC, TC, NC, I, M**
Commercial Fishing (CF)	CF
Marine Use (MR)	MR
Highway Commercial (HC)	VC, TC, HC, I, M**
Neighborhood Commercial (NC)	VC, NC, I, M**
Industrial (I)	I, M**
Public and Semi-Public Services (PS)*	PS*
Recreation (R)++	R
Mariculture (M)**	M**

+Village Center (VC) zoning district is only eligible as a sender site when the receiver site is within the Village Center (VC) zoning district.

++ Recreation (R) zoning district is only eligible as a sender and receiver site if located within the Mixed Use (MU) FLUM category.

\* Public and Semi-Public Services (PS) zoning district is only eligible as a sender and receiver site if located within the Mixed Use (MU) or Industrial (I) FLUM category.

\*\*Mariculture (M) is only eligible as a sender and receiver site if located within the Industrial (I) FLUM category.

- (5) The structure cannot be placed in a VE flood zone on the receiver site.
- (6) Parcels not containing any shoreline shall be prohibited from transferring to parcels containing shorelines.
- (7) A declaration of covenants, conditions and restrictions, as approved by the village attorney, 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.
- (8) Following the transfer of nonresidential floor area from a sender site, affordable housing in accordance with article IV, division 11 of this chapter may be developed on the sender site by either the conversion of an existing structure or a portion thereof, or the construction of a new structure. A new or existing structure shall be brought into compliance with all applicable sections of this chapter and the Florida Building Code. This option may only be utilized provided that the applicant applies for and is granted an allocation award for an affordable residential dwelling unit from the Building Permit Allocation System in accordance with article IV, division 11 of this chapter. In no case shall development of the sender site or the receiver site exceed the permitted density or intensity provided for within division 2 of article V of this chapter. Furthermore, the transfer or conversion to affordable housing on the sender site shall be completed prior to the issuance of a building permit on the receiver site. If the above option is not utilized, the applicant shall be required to demolish the transferred nonresidential floor area on the sender site.

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

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

(1) Dwelling units and density.

- a. The transfer of four or less dwelling units shall be reviewed using the procedures for minor conditional use review pursuant to section 30-217 and shall be noticed pursuant to the procedures in section 30-213(h), except that hotels and motels shall not be considered a residential use;
- b. The transfer of five or more dwelling units shall be reviewed using the procedures for major conditional use review pursuant to section 30-218 and shall be noticed pursuant to the procedures in section 30-213(i), except that hotels and motels shall not be considered a residential use; and
- c. Both sender and receiver sites shall be in zoning districts that permit dwelling units and shall be subject to the following restrictions for the transfer of dwelling units:

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

Commercial Fishing (CF)	<u>RE, R1, R1M, RMH, R2, R3, R4, MF, MH, SR, VC, TC, CF, MR, NC, I*, TA, M*</u>
Marine Use (MR)	<u>RE, R1, R1M, RMH, R2, R3, R4, MF, MH, SR, VC, TC, MR, NC, I*, M*</u>
Highway Commercial (HC)	<u>RE, R1, R1M, RMH, R2, R3, R4, MF, MH, SR, VC, TC, HC, NC, I*, M*</u>
Neighborhood Commercial (NC)	<u>RE, R1, R1M, RMH, R2, R3, R4, MF, MH, SR, VC, NC, I*, M*</u>
Industrial (I)*	<u>I*, M*</u>
Tavernaero Airstrip (TA)	<u>MF, MH, SR+, VC, TC, NC, I*, TA, M*</u>
Public and Semi-Public Services (PS)	<u>R1**, R1M**, R2**, R3**, R4**, MH**, SR**, VC**, TC**, HC**, NC**, I*, M*</u>
Mariculture (M)	<u>M*</u>

\*Limited to a caretaker's cottage.

\*\*Limited to affordable residential dwelling unit.

+ Limited to lots of record within Mixed Use FLUM.

d. The transfer of residential density shall be in conformance with the following table:

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

\*Limited to a caretaker's cottage.

\*\*Limited to affordable residential dwelling unit.

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

(2) Hotel/motel units.

- a. The transfer of four or less hotel or motel unit(s) shall be reviewed using the procedures for minor conditional use review pursuant to section 30-217 and shall be noticed pursuant to the procedures in section 30-213(h).
- b. The transfer of five or more hotel or motel units shall be reviewed using the procedures for major conditional use review pursuant to section 30-218 and shall be noticed pursuant to the procedures in section 30-213(i).

- c. The receiver site shall be located in either the village center (VC), tourist commercial (TC) or highway commercial (HC) zoning district.
- (3) Development of the 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.
- (4) The structure cannot be placed in a VE flood zone on the receiver site.
- (5) Regardless of the on-site allocated densities available on a lot, exercising the TDR process to remove dwelling units, transfer building permits or density from a lot shall, result in a permanent reduction of density, and no additional density to that remaining on the sender site after the transfer takes place shall be permitted on the sender site. Notwithstanding the foregoing, affordable housing and/or nonresidential floor area may be provided only through the Building Permit Allocation System in instances following the transfer of a hotel or motel unit, but in no case shall the sender or receiver site exceed the permitted density or intensity provided for within division 2 of article V of this chapter. Each TDR shall require that a declaration of covenants, conditions and restrictions, as approved by the village attorney, be placed on the sender site, restricting densities to the number of market-rate, hotel or motel units remaining on the sender site after the transfer takes place.
- (6) Following the transfer of a hotel or motel unit(s) from a sender site, affordable housing and/or nonresidential floor area in accordance with article IV, division 11 of this chapter, may be developed on the sender site by either the conversion of an existing structure or portion thereof, or the construction of a new structure. A new or existing structure shall be brought into compliance with all applicable sections of this chapter and the Florida Building Code. This option may only be utilized provided that the applicant applies for

and is granted an allocation award for an affordable residential dwelling unit and/or nonresidential floor area from the Building Permit Allocation System in accordance with article IV, division 11 of this chapter. In no case shall development of the sender site or the receiver site exceed the permitted density or intensity provided for within division 2 of article V of this chapter. Furthermore, the transfer or conversion to affordable housing and/or nonresidential floor area on the sender site shall be completed prior to the issuance of a building permit on the receiver site. If the above option is not utilized, the applicant shall be required to demolish the transferred hotel or motel unit(s) on the sender site.

- (7) A grant of conservation easement agreement (GOCEA), as approved by the village attorney, shall be placed by the owner of the sender site on all areas of the sender site determined to be tropical hardwood hammock and ~~on all areas required to be restored as follows, restricting further residential development rights. The sender site shall be restored or mitigated pursuant to a restoration and/or transplantation plan approved by the director. Any restoration and/or transplantation plan shall be in accordance with sections 1615 of this chapter at a density of no less than one tree and two shrubs per 100 square feet. The area to be restored on the sender site or otherwise mitigated shall be proportional to the density of existing development on the sender site at the time of transfer. For example, if an applicant has four dwelling units and one dwelling unit is transferred, then 25 percent of the disturbed area of the parcel shall be restored. In all cases the restoration and/or mitigation shall be completed within six months from the issuance of the conditional use permit allowing the transfer of development rights and a biologist who has been approved by the director shall certify the successful completion of the restoration plan. Notwithstanding, where the sender site is within a platted~~

~~subdivision and is a class III parcel, such site may retain rights to build non-habitable accessory structures such as sheds, swimming pools and docks, if such structures cumulatively cover no more than 50 percent of the parcel, the structures are developed subject to the clustering provisions of this chapter, and the remaining 50 percent is restored pursuant to a restoration plan approved by the director, which shall be at a density of no less than one tree and two shrubs per 100 square feet. Notwithstanding the foregoing, when any hotel or motel unit(s) are transferred, the sender site shall be required to comply with the landscaping standards pursuant to a restoration plan consistent with article V, division 6 of this chapter and approved by the director of planning and development services.~~

(8) The following restrictions on residential dwelling unit transfers shall apply:

- a. Hotel and motel unit TDRs shall be transferable only to hotel and motel units;
- b. Market rate dwelling unit TDRs shall be transferable only to market rate dwelling units or affordable dwelling units, and furthermore parcels not containing any shoreline shall be prohibited from transferring to parcels containing shorelines; and
- c. Affordable dwelling unit TDRs, including all mobile homes and recreational vehicle spaces from approved mobile home parks, shall be transferable only as affordable dwelling units, in accordance with affordability standards and definitions as specified in Section 30-32 of this Code.

**Section 2. 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 3. 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 4. 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 and be made a part of the Code of Islamorada, Village of Islands, Florida, that the sections of the Ordinance may be renumbered or relettered to accomplish to such intentions, and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

**Section 5. Transmittal to the State 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 State Department of Economic Opportunity for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

**Section 6. Effective Date.** This Ordinance shall not become effective until approved pursuant to final order issued by the State Department of Economic Opportunity pursuant to Chapter 380, 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 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 Vice Mayor Deb Gillis, who moved for its adoption. This motion was seconded by Councilman Ken Philipson, and upon being put to a vote, the vote was as follows:

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

PASSED AND ADOPTED on second reading this 23<sup>rd</sup> day of September, 2014.

  
TED BLACKBURN, 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