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Chapter 21A.80 TRANSFER OF DEVELOPMENT RIGHTS

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21A.80.010 Purpose and intent.

(1) The purpose of the transfer of development rights (**TDR**) program is to implement a market-based tool to permanently preserve partially developed or undeveloped land with important public benefits, such as farmland, forestland, open space, and wildlife habitat, through the private acquisition of the development rights on those lands ("sending sites") and the subsequent transfer of those rights to lands more suitable for development ("receiving sites").

(2) The **TDR** provisions supplement land use regulations, resource protection efforts and open space acquisition programs and are intended to encourage increased residential development density or increased commercial square footage where it can best be accommodated by:

- (a) Providing an incentive process for property owners of partially developed property, undeveloped land, farmland, forestland, open space and wildlife habitat to preserve lands with a public benefit; and
- (b) Providing an administrative review process to ensure that transfers of development rights are evaluated and administered in a fair and timely manner in accordance with other City goals and policies. (Ord. O2011-297 § 1 (Att. A))

21A.80.020 Applicability.

All new development on a site identified as a receiving site pursuant to SMC 21A.80.040 shall have the option to acquire a certified transfer of development rights to increase the development potential of the receiving site. All private property owners owning a site that qualifies as a sending site pursuant to SMC 21A.80.030 and 21A.80.050 shall have the option to request sending site certification and to sell the development potential of a sending site to an interested buyer. The development potential of a sending site, as determined by site certification pursuant to SMC 21A.80.060, may be transferred and credited to a receiving site only when the transfer is approved in accordance with this chapter. (Ord. O2011-297 § 1 (Att. A))

21A.80.030 Sending site categories and criteria.

(1) A sending site may be certified by the City pursuant to SMC 21A.80.060, provided the sending site meets the criteria for one of the following sending site categories, and the provisions of subsection (2) of this section:

(a) In-City Sending Sites. Undeveloped or partially developed properties located within the following areas may qualify as in-City sending sites. The department shall maintain maps of the approximate location of these areas, which shall be subject to field verification as part of the certification process:

- (i) Properties located within the Thompson subbasin; or
- (ii) Properties located within the Inglewood subbasin; or
- (iii) Properties located within erosion hazards special district overlay; or
- (iv) Properties located within the wetland management areas special district overlay.

(b) Interjurisdictional Sending Sites.

- (i) Unincorporated King County land identified by the City council in an interlocal agreement with King County; or
- (ii) Land identified by the City council in an interlocal agreement with another jurisdiction.

(c) For the purposes of this chapter, “undeveloped properties” are properties that have the potential to accommodate dwelling units and do not currently contain dwelling units.

(2) To be eligible for the TDR program, all sending sites shall be certified by the City pursuant to SMC 21A.80.060, have intact development potential, and provide a defined public benefit.

(a) A sending site is deemed to have a defined public benefit if the site is:

- (i) Open space adjacent to, or connected with, City park or open space lands; or
- (ii) Wildlife habitat for threatened and/or endangered species listed by the federal government or the state of Washington; or
- (iii) Located such that preservation will provide additional protection for sensitive subbasins or environmentally critical areas; or
- (iv) Farmland; or
- (v) Forestland.

(b) A sending site is deemed to have intact development potential if the area proposed for conservation is:

- (i) Of sufficient area to create at least one development right pursuant to SMC 21A.80.050; and
- (ii) Contiguous, except for division by public rights-of-way; and
- (iii) The sending site’s development rights or development capacity is not exhausted through any of the following:
 - (A) Existing development on the site; or
 - (B) Agriculture, recreation, or open space easements; or
 - (C) Conservation of environmentally sensitive areas and their buffers through means including, but not limited to, an open space easement or native growth easement; or
 - (D) Alteration by a conservation easement or through any agreement.

(3) Development rights acquired from eligible sending sites may be transferred to eligible receiving sites through the TDR transfer process. After completion of the conveyance of a sending site's development rights, the property shall be maintained in a condition that is consistent with the criteria in this chapter under which the sending site was qualified by means of a TDR conservation easement. (Ord. O2011-297 § 1 (Att. A))

21A.80.040 Receiving sites.

(1) Eligible receiving sites shall be:

(a) Town Center subarea properties as follows:

(i) Commercial properties in Zone A of the Town Center subarea;

(ii) Residential properties in Zones A, B, C, and D of the Town Center subarea.

(b) [Placeholder for future receiving sites].

(2) Except as provided in this chapter, development of a receiving site shall remain subject to all use, lot coverage, height, setback and other applicable requirements of the Sammamish Municipal Code.

(3) A Town Center subarea receiving site may accept density credits, up to the maximum density authorized pursuant to Chapter 21B.25 SMC, from any sending site or combination of sending sites.

(4) A [placeholder for future receiving sites] receiving site may accept density credits, up to the maximum density authorized pursuant to Chapter 21A.25 SMC, from any sending site or combination of sending sites. (Ord. O2011-297 § 1 (Att. A))

21A.80.050 Calculation of available development rights from sending sites.

The number of development rights that a sending site is eligible to sell under this program shall be calculated based upon the sending site category established pursuant to SMC 21A.80.030, provided:

(1) Interjurisdictional Sending Sites.

(a) The number of development rights eligible for sale on a sending site located on land identified by the City council in an interlocal agreement with another jurisdiction shall be determined pursuant to the interlocal agreement.

(b) If the sending site is located on unincorporated King County land identified by the City council in an interlocal agreement with King County, the number of development rights eligible for sale may be determined pursuant to the interlocal agreement.

(2) In-City Sending Sites. The number of development rights eligible for sale on a sending site located in the in-City preservation sending site category shall be determined pursuant to SMC 21A.25.070 and 21A.25.080, subject to the limitation of subsection (3) of this section; and provided, that the minimum number of development rights for an undeveloped property shall be one per legal lot.

(3) No development rights may be assigned to land already encumbered by a conservation easement unless expressly reserved by the easement. (Ord. O2011-297 § 1 (Att. A))

21A.80.060 Sending site certification.

(1) Sending Sites Located within Sammamish.

(a) The City shall be responsible for determining whether properties are eligible to be considered a sending site. The City shall base its decision on the materials provided by the landowner in a TDR sending site

application and a satisfaction of the sending site requirements outlined in SMC 21A.80.030 and calculations in SMC 21A.80.050.

(b) Responsibility for preparing a completed sending site application rests exclusively with the applicant. Application forms shall be available from the department of community development.

(c) Sending site landowners may obtain TDR certificates which can be transferred pursuant to SMC 21A.80.100 and used by receiving area landowners. The process for obtaining the TDR certificates is as follows:

(i) Following City review and approval of an application for TDR certificates by the sending site owner, the City shall issue a TDR certificate letter of intent. The letter shall contain the following:

(A) A determination of the number of development rights calculated for the sending site pursuant to SMC 21A.80.050 and 21A.80.100; and

(B) An agreement by the City to issue a corresponding number of TDR certificates in conversion for a conservation easement granted by the City or the City's designated agent; and

(C) A summary of the expected terms of use for the sending site established through SMC 21A.80.070.

(ii) The sending site owner may use the TDR certificate letter of intent to market sending site development rights to potential purchasers, but the certificate letter of intent shall have no value and cannot be transferred or used to obtain increased development rights within receiving areas.

(iii) The letter of intent shall expire 10 years from the date of issuance by the City of Sammamish.

(iv) As provided by the TDR certificate letter of intent, the City shall issue serially numbered TDR certificates to the sending site owner upon acceptance of a TDR conservation easement. The City shall have 90 days from the date the conservation easement is offered by the sending site owner in which to conduct, at its discretion, a review of the sending site records and/or a site inspection.

(v) A TDR conservation easement will not encumber a sending site until such time as a TDR certificate or certificates have been issued to sending site landowners pursuant to SMC 21A.80.100 except by owner preference. The director is authorized to create administrative rules to provide for phased development of a project incorporating TDRs.

(2) Sending Sites Located Outside of Sammamish.

(a) All development rights transferred through an interlocal agreement with another jurisdiction from sending sites located outside of the City limits of Sammamish shall be transferred into Sammamish pursuant to the terms of the interlocal TDR agreement with the relevant jurisdiction.

(b) All development rights that are not subject to the terms of an interlocal agreement with another jurisdiction and are transferred from sending sites located outside the City limits of Sammamish shall be transferred into Sammamish pursuant to subsection (1) of this section.

(3) The maximum number of sending site TDR certificates issued, and resulting in the recording of a conservation easement, shall not exceed 630. (Ord. O2011-297 § 1 (Att. A))

21A.80.070 Documentation of restrictions.

- (1) TDR certificates issued to sending sites by the City of Sammamish shall have a conservation easement restricting the deed and granted to the City of Sammamish, or an appropriate agent, recorded with King County and notice placed on the title of the sending parcel.
- (2) TDR certificates issued to sending sites pursuant to an interlocal agreement with another jurisdiction shall have a conservation easement restricting the deed recorded with King County and notice placed on the title of the sending parcel.
- (3) The director shall establish the form of conservation easements issued by the City of Sammamish; however, the conservation easement shall contain, at a minimum the following items:
 - (a) The number of development rights extinguished on the sending site through the TDR certificate issuance;
 - (b) The specific public benefit identified on the subject site pursuant to SMC 21A.80.030; and
 - (c) The terms of use for the subject site, consistent with required protections of the identified public benefit;
 - (d) The intent of the conservation easement shall be to encumber the property perpetually. (Ord. O2011-297 § 1 (Att. A))

21A.80.080 Sending site development limitations.

- (1) Sending sites that the City has issued TDR certificate letter of intent for shall be limited to uses consistent with the purpose and intent of this chapter and with the criteria originally used as the basis for issuing the letter of intent to the sending site pursuant to SMC 21A.80.030 and 21A.80.060. Failure to use the sending site in a manner consistent with the original certification may result in the City not issuing TDR certificates.
- (2) When only a portion of a site's development rights have been conveyed and extinguished, the owner retains all rights on the remaining buildable portion of the property and may exercise them pursuant to Sammamish Municipal Code.
- (3) The conservation easement by its terms may reserve dwelling units that may be developed in the future. Transferred development rights explicitly identified in the conservation easement pursuant to SMC 21A.80.070 shall be separated from the property through the conservation easement.
- (4) The landowner shall not undertake any division, subdivision or partitioning of the property, whether by physical or legal process, which includes, but is not limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the property is divided into lots or in which title to different portions of the property are not held in unified ownership, unless such land division allocates the reserved development rights between the divided parcels of property in a manner consistent with the terms of the conservation easement.
- (5) Use of a sending site subject to a conservation easement shall be limited to uses consistent with the purpose and intent of this chapter and with the criteria originally used to establish the sending site.
- (6) Once an undeveloped or partially developed sending site has been encumbered by a conservation easement, additional development potential within the sending site area constrained by the conservation easement cannot be created by means of a rezone of the property. (Ord. O2011-297 § 1 (Att. A))

21A.80.090 Receiving site incentives.

- (1) Development rights may be purchased to achieve TDR-based incentive densities allowed by Sammamish development regulations on receiving sites identified in SMC 21A.80.040.

(2) Receiving Site Incentives.

(a) Town Center. The following table outlines TDR-based incentives for eligible receiving sites with the purchase of a development right. (For example, a sending site in the R-1 zone that generates one TDR will allow for the creation of four dwelling units at a receiving in the TC-C zone of the Town Center. Alternatively, the same site in the R-1 zone that generates one TDR will allow 7,716 square feet of additional commercial development in the Town Center):

Table 21A.80.090

Receiving Site Incentive Table

| | | Sending Zoning | | | |
|------------------|------------|----------------|---------------|---------------|---------------|
| | | R-1 | R-4 | R-6 | KC Lands |
| Receiving Zoning | Commercial | 7,716 sq. ft. | 3,560 sq. ft. | 2,600 sq. ft. | 3,560 sq. ft. |
| | Zone C | 4 du | 2 du | 1 du | 2 du |
| | Zone B | 7 du | 3 du | 2 du | 3 du |
| | Zone A | | | | 5 du |

Note: Dwelling units may be transferred from the TC-D zone into the TC-A zones, subject to the provisions of SMC 21B.25.040(2)(d).

(b) [Placeholder for future receiving sites].

(3) Modification of Receiving Site Incentives.

(a) The director is authorized to recommend that the City council adopt a revised incentive table to address changing economic conditions or to further refine the receiving site incentives. The director is also authorized to recommend that the City council adopt receiving site incentives for sending sites not currently identified in subsection (2) of this section. The incentive table shall not be revised more than once in a calendar year. The director shall base the recommendation of a revised incentive table on the following economic analysis:

- (i) The expected marginal value of the receiving site incentives; and
- (ii) The prevailing cost of per square foot commercial or residential development and the impact of the acquisition of TDRs on a project's marginal returns; and
- (iii) The appropriate regional costs of development per commercial square foot or residential dwelling unit; and
- (iv) Consistency with the conservation principles and purpose and intent of this chapter.

(b) Once adopted by the Council, the modified receiving site incentive table shall be used for calculation of receiving site incentives. Within 14 days of adopting a revised incentive table, the director shall mail notification to property owners with an active TDR certificate letter of intent following adoption of a revised incentive table.

(c) If adoption of a revised incentive table is requested by a developer or private property owner, the burden of preparing the economic analysis shall be on the developer or private property owner.

(d) The director shall keep a log of modified receiving site incentives and shall periodically report the modifications to the City council. (Ord. O2011-310 § 1 (Att. A); Ord. O2011-297 § 1 (Att. A))

21A.80.100 TDR transfer process.

(1) Receiving site landowners are required to transfer sending site TDR certificates to achieve TDR-based incentive densities. Permit applications may be submitted without the purchase of TDR certificates, but no permits for development associated with a TDR project shall be issued until the TDR certificate requirement is satisfied.

(2) The required TDR certificates may be acquired by:

- (a) Transferring development rights from certified sending sites; or
- (b) Transferring development rights from certified sending sites owned by a receiving site owner; or
- (c) Purchasing previously purchased, unexecuted development rights from another buyer.

(3) All receiving site projects using TDRs must be in accordance with all other applicable laws and regulations. (Ord. O2011-297 § 1 (Att. A))

The Sammamish Municipal Code is current through Ordinance O2016-415, passed September 6, 2016.

Disclaimer: The City Clerk's Office has the official version of the Sammamish Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.