

ORDINANCE NO. 2017-08

AN ORDINANCE OF THE CITY OF POLK CITY, FLORIDA AMENDING THE UNIFIED LAND DEVELOPMENT CODE OF THE CITY OF POLK CITY, FLORIDA; SPECIFICALLY, TO AMEND THE TEXT IN ARTICLE 7, DEVELOPMENT APPROVAL PROCESS TO PROVIDE A NEW SECTION 7.12.00, TRANSFER OF DEVELOPMENT RIGHTS; AND AMENDING ARTICLE 9, DEFINITIONS TO ADD DEFINITIONS RELATED TO THE TRANSFER OF DEVELOPMENT RIGHTS; REPEALING ALL OTHER ORDINANCES IN CONFLICT HEREIN; AND PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 163.3167(c), Florida Statutes, empowers the City to adopt land development regulations to guide the growth and development of the City; and

WHEREAS, in City Commission recognizes that there are environmentally sensitive areas within the Polk City Green Swamp Exemption Area where development entitlements would be better transferred to other areas of the City including the Polk City Special Protection Area of the Green Swamp Area of Critical State Concern;

WHEREAS, the City Commission of the City of Polk City has determined that it would be in the best interest of the public health, safety and general welfare of the residents to provide policies addressing the transfer of development rights from the Polk City Green Swamp Exemption Area to the Polk City Special Protection Area of the Green Swamp Area of Critical State Concern within the city; and

WHEREAS, pursuant to Section 166.041(c)2, Florida Statutes, the Planning Commission and the City Commission have held meetings and hearings to amend the **Unified Land Development Code as presented in the attached exhibit**, such exhibit attached as Exhibit "A" and made a part hereof; and, the meetings were advertised and held with due public notice, to obtain public comment; and having considered written and oral comments received during public hearings, find the changes necessary and appropriate to the needs of the City; and

NOW, THEREFORE BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF POLK CITY, FLORIDA that the **Unified Land Development Code of the City of Polk City** is amended as set forth in Exhibit "A".

Section 1. The provisions set forth in the recitals to this Ordinance (whereas clauses) are hereby adopted by the City Commission as the legislative findings and intent pertaining to this Ordinance.

Section 2. The City of Polk City hereby amends the Land Development, amendments are set forth in **Exhibit "A"** attached hereto and by this reference made a part hereof.

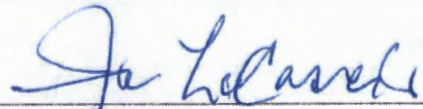
Section 3. This Ordinance shall be codified in the Code of Ordinances of the City of Polk City, Florida. A certified copy of this enacting ordinance shall be located in the Office of the City Clerk of Polk City. The City Clerk shall also make copies available to the public for a reasonable publication charge.

Section 4. If any provision of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such provision and such holding shall not affect the validity of any other provision, and to that end the provisions of this Ordinance are hereby declared severable.

Section 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.


Section 6. The effective date of these amendments, if the amendments are not timely challenged, shall be 45 days after the State Land Planning Agency notifies the local government that the amendment package is complete. If timely challenged, the amendments shall become effective on the date the State Land Planning Agency or the Administration Commission enters a final order determining the adopted amendments to be in compliance. No development orders, development permits, or land uses dependent on these amendments may be issued or commence before it has become effective. If a final order of noncompliance is issued by the Administration Council, the amendments may nevertheless be made effective by adoption of a resolution affirming the effective status, a copy of which resolution shall be sent to the State Land Planning Agency.

INTRODUCED, PASSED on FIRST READING, this 20th day of November, 2017.




Joe LaCascia, Mayor

Approved as to form and correctness



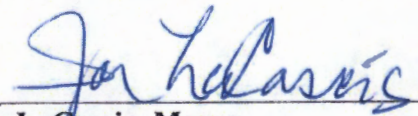
Thomas A. Cloud, City Attorney

ATTEST:



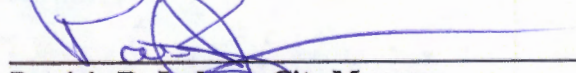
Patricia R. Jackson, City Manager

PASSED AND DULY ADOPTED ON SECOND READING, with a quorum present and voting by the City Commission of the City of Polk City, Florida meeting in Regular Session this 16th day of April, 2018.



Joe LaCascia, Mayor

ATTEST:



Patricia R. Jackson, City Manager

**ORDINANCE 2017-08
EXHIBIT "A"**

PROPOSED AMENDMENTS

CITY OF POLK CITY LAND DEVELOPMENT CODE

**TO PROVIDE REGULATIONS SPECIFIC TO THE
TRANSFER OF DEVELOPMENT RIGHTS**

- The following amendments to the Polk City Land Development Code are proposed to provide policies regarding Transfer of Development Rights from the Polk City Exemption Area to the Polk City Special Protection Area within the City of Polk City.
- Text shown in gray shading as underlined is text to be added and text shown as ~~strikeout~~ is text to be removed.

ARTICLE 9: DEFINITIONS *The definitions below relate to Transfer of Development Rights (TDRs) and are proposed to be added to Article 9: Definitions*

Deed of transfer of development rights.

A legal document which transfers the ownership of specified transferable development rights from the owner of the Sending Area to the owner of the Receiving Area, and which is recorded in the Public Records of Polk County, Florida.

Sending area.

An area containing the land based resource which the TDR program is designed to protect, as specified in Article 7, and from which development rights are transferred pursuant to provisions of Transfer of Development Rights Options of Article 7.

Receiving area.

An area containing the land-based resource which the TDR program is designed to benefit, as specified in Article 7, and from which development rights are received pursuant to provisions of Transfer of Development Rights Options of Article 7.

Transfer of development rights (TDR) easement.

An easement over real property that restricts the use of the property to agricultural, open space, or conservation use, as specified in easement.

Release of development rights easements.

The transfer of development rights Easement which will be placed on property from which density is transferred will remain on the property until additional development rights are restored to that property through a comprehensive plan amendment or through the acquisition of development rights transferred from another property.

ARTICLE 7: DEVELOPMENT APPROVAL PROCESS

Section 7.12.00: Transfer of Development Rights

The text below is proposed to be added Article 7, Development Approval Process of the City of Polk City Land Development Code.

Section 7.12.00. Transfer of Development Rights - Purpose and intent.

The purpose of this division is to provide for the protection of environmentally sensitive lands and to promote orderly growth in Polk City by allowing development rights to be severed from sending lands and transferred to sites where additional development can be accommodated. The transfer of development rights program is designed to protect natural resources, redistribute population densities, or development potential, to encourage the most efficient use of services and facilities. Further, it is the purpose and intent of this division to provide an alternative to the development of sending lands by establishing a mechanism to seek economic relief from the limitation of development imposed on these lands. Transfer of development rights can mitigate inequities in the valuation of land by providing a means of compensating landowners whose property is restricted, by permitting the sale of development rights, and making landowners in more intensively developed areas pay for the right to develop up to maximum density, by purchasing development rights.

Section 7.12.01. Applicability.

Development rights may be transferred from sending areas pursuant to the procedures contained in this Article, to property in incorporated Polk City which meets the qualifications to receive such density.

When a development is proposed that includes the Transfer of Development Rights, that development may warrant additional review including public workshops and hearings pending the merits of the application.

Section 7.12.02. TDR program in general.

The transfer of development rights (TDR) program allows a property owner to exceed his starting density by purchasing development rights from the property owner with land in a designated sending area as so to allow an increase up to the maximum density and allowed development types of the receiving site. In order to increase density, the site must meet the requirements to become a designated receiving area and follow the procedures as described in this Article. When development rights are transferred from the sending area to the receiving area, a TDR easement over the sending area shall be simultaneously recorded in the public records of Polk County, restricting future development potential.

Section 7.12.03. Administration.

- A. **General.** Except as otherwise specified, the transfer of development rights program shall be administered by the City Manager or designee.
- B. **Responsibilities.** The City Manager or designee shall be responsible for:
1. Establishing, administering and promoting the City's transfer of development rights program.
 2. Administering the transfer of development rights bank established by the Polk City Commission.
 3. Ensuring the orderly and expeditious processing of transfer of development rights applications under this division.
 4. Ensuring the contract for sale and purchase of development rights is executed and all deeds and easements are recorded in the public records of Polk County.
 5. Ensuring that the Property Appraiser's office is notified of all transfers of development rights.
 6. Ensuring that the Future Land Use Map, if applicable, is amended by a staff initiated Future Land Use Map amendment to reflect an appropriate Future Land Use designation for the sending area.

Section 7.12.04. Sending area.

- A. **General.** Sending areas represent in part those areas of the city that are designated by the City Commission to warrant protection. The owner of property in a designated sending area may transfer the development rights to a parcel of land in a designated receiving area, subject to the provisions of this section.
- B. **Eligible sending area shall include:**
1. **Lands designated as wetlands and floodplains,** on the Future Land Use Wetlands Overlay Map and Floodplains Overlay Map, or which may be designated as residential, on the Comprehensive Plan Future Land Use Map and the Zoning Map.
 2. **Other sites determined by the City Commission to be worthy of protection.** At such a time that the City Commission determines that a parcel of land is environmentally sensitive or preservation of the site is in the public interest, the parcel is eligible to become a designated sending area. The site shall be designated by resolution of the City Commission.

3. **Lands designated as agriculture** on the Comprehensive Plan Future Land Use Map and Agriculture on the Zoning Map.

C. **Transfer rate.** The owner of land which is designated as a sending area may elect to transfer development rights as provided in this section. Residential development rights may be transferred from property consistent with the maximum density of the sending area's Future Land Use designation. All properties must be legal lots of record.

D. **Computation of the development rights.** The number of development rights assigned to a sending area parcel of land shall be determined by the City Manager or designee as calculated below:

1. All development rights shall be in whole numbers, no fractions shall be permitted. Any fractional residential unit that may occur during calculations shall be converted upward, if one-half or more of a whole unit, or downward, if less than one-half of a whole unit, to the nearest whole unit.

2. The amount of development rights assigned to a sending area parcel shall be reduced by one dwelling unit for every conforming residential structure situated on the property at the time of approval.

E. **Restriction on future use.** Upon closing of the contract for sale and purchase, an appropriate document shall be recorded in the public records of Polk County for the Sending Area. In addition, the residential development of the subject property shall be considered severed. Conservation or agriculture easements shall satisfy all requirements of F.S. § 704.06.

F. **Existing uses.** Residential dwelling units which existed prior to making application to transfer development rights shall be permitted to remain as legal conforming uses. All other uses shall be considered non-conforming.

G. **Remaining land area.** If all of the development rights assigned to a sending area are not transferred off the site, the remaining development rights, if proposed for development, shall be developed in a manner consistent with its Comprehensive Plan Future Land Use designation and compatible with the surrounding area.

Section 7.12.05. Receiving areas.

Development rights shall only be transferred to those parcels which meet the qualifications for designation as receiving areas.

A. **Eligible receiving areas.** In order to qualify as a receiving area for an increase in density above the starting densities allowed by the comprehensive plan a parcel must:

1. Be located within any of the residential urban land use designation mapped by the comprehensive plan and on the zoning atlas.

2. Be compatible with surrounding land uses.

3. Meet all concurrency requirements.

B. **Residential density bonus.** Approved planned unit development receiving areas may receive a density up to the maximum density allowed by the future land use designation.

Section 7.12.06. Transfer of development rights: sending area procedure.

A. **Sending parcel application.** The property owner of environmentally sensitive lands must make application for an administrative determination in order to be formally designated as a sending area. The purpose of this administrative determination is to ascertain the exact number of development rights the property owner is entitled. The application shall include, at a minimum:

1. Proof of ownership;

2. A legal description of the property;

3. Contract or option for the purchase and sale of development rights.

B. **Review process.**

1. Within 15 working days from receipt of the application, the City administrative staff shall complete a site check to ensure that the site has not been altered. Within five working days from completion of the site check, the City administrative staff shall complete a written recommendation to the City Manager or designee regarding the site.

2. Within five working days from receiving the staff recommendation, the City Manager or designee shall complete the review of the application.

C. **Written determination.** The property owner shall receive a written determination indicating how many development rights can be sold. The number of development rights for the site shall be documented and be kept on file at the City. The written document shall be valid for a period of 12 months.

D. **Transfer of development rights (TDR) Document.** Simultaneous with closing on the contract for purchase and sale of development rights, the owner of land in the sending area shall execute a recordable document, in a form acceptable to the City Commission. The document shall restrict future use of the land, shall satisfy all requirements of F.S. § 407.06, shall be recorded in the public records of Polk County, and shall run with the land and be binding with all current and subsequent owners of the servient estate in perpetuity.

E. **Re-submittal for application.** The owner of a sending parcel may re-apply until all development rights have been severed from the property.

F. **Development right certificates.** A Polk City Development Rights Certificate is a legal document which permits a property owner to retain and sell development rights after donating environmentally sensitive lands (sending areas) to the City. These lands shall be managed by the City or its designee. In such cases, TDRs shall be treated in a manner similar to retention of mineral rights and shall be recognized upon recording of a deed transferring ownership from the property owner to the City.

1. **Eligibility.** Development rights certificates shall only be issued to property owners with land in sending areas that donate the environmentally sensitive land to the city. The development rights certificate shall require that restrictions be placed on the sending area prior to the sale of those development rights. A minimum donation of ten acres is required.

2. **Issuance of the certificate.** Upon completion of the application process, and recordation of the deed transferring ownership of the property to Polk City, the property owner shall be issued a development rights certificate. The certificate shall indicate the exact number of development rights which can be sold, transferred, or traded, by the holder of such certificate. The certificate shall remain in effect until used in a designated receiving area in accordance with provisions of this division.

G. **Limitation.** The amount of development rights assigned to a sending area parcel, or indicated on a certificate, shall be reduced by one for every conforming residential structure situated on the property at the time of application.

Section 7.12.07. Transfer of development rights: receiving area procedure.

A. **General.** Transfer of development rights is considered a special density program and receiving areas shall be approved concurrent with issuance of a development order. The following procedures shall be followed in order to become a receiving area in Polk City.

B. **Pre-application conference.** Prior to submittal of an application requesting to be a receiving area, the applicant is encouraged to attend a pre-application conference with the planning staff, to review the proposed development, and the requirements and procedures of the transfer of development rights program.

1. **Submission of application.** An applicant for receiving area status must submit all necessary information and material, including a contract (or option) for sale and purchase of development rights, as required by the transfer of development rights program.

2. **Determination of sufficiency.** The City Manager or designee shall determine the sufficiency of an application for transfer of development rights within five working days from the receipt of the application.
 - a. **If it is determined that the application is not sufficient,** written notice shall be mailed to the applicant specifying the deficiencies within ten working days of the determination. The City Manager or designee shall take no further action on the application unless the deficiencies are remedied. If the deficiencies are not remedied within 20 working days, the application shall be considered withdrawn.
 - b. **If the application is determined sufficient,** the City Manager or designee will proceed to review the application pursuant to the procedures and standards of this division.
3. **Review and decision of the City Manager or designee.** Within 15 working days after the City Manager or designee determines the application is sufficient, the application shall be reviewed to determine if the applicant has complied with the preliminary requirements for a receiving area. A letter of agreement or development agreement incorporating the items of the letter must accompany the adequate facilities component of the application prior to issuance of a concurrency reservation or conditional concurrency. Reservations shall be based on the total density of the development including the density to be granted pursuant to the transfer of development rights program.
4. **Standards.** All applications for the transfer of development rights receiving area program shall comply with these standards:
 - a. **The proposed development and request to be designated a receiving area for a density increase shall be compatible with surrounding land uses and consistent with the Comprehensive Plan.**
 - b. **The requested density increase shall not exceed the maximum density permitted by the Future Land Use designation.**
5. **Issuance of a preliminary report.** A preliminary report prepared by the City Manager or designee shall be issued within seven working days of action or inaction. The report shall identify all conditions that must be fulfilled by the developer in order for the property to be designated a receiving area, and receive the requested or recommended increase in density.

Section 7.12.08. Development review procedures for the transfer of development rights receiving area applicants.

Upon the issuance of the preliminary report approving the request, the property owner shall proceed through the development approval process.

A. Review and recommendation of City Manager or designee. The City Manager or designee shall review the application, preliminary report, letter of agreement or development agreement and recommend approval, approval with conditions, or denial of the application based on the standards in this section, for all developments with density transfers.

B. Review and recommendation of the Planning Commission. Within 20 working days of the recommendation of the City Manager or designee, the Planning Commission shall consider the application, the preliminary report, the City Manager or designee's recommendation, the relevant support materials, and public testimony given at a hearing. After the close of the public hearing, the Planning Commission shall recommend to the City Commission approval, approval with conditions, or denial of the application and the proposed increase in density.

C. City Commission findings. In addition to finding that the standards to qualify as a receiving area and be eligible for an increase in density have been satisfied, by the City Commission shall require that:

1. The transfer of development rights is by deed, and the deed shall be recorded with the City in the same manner as a deed for real property before final site plan approval.
2. The transfer is to eligible parcels of land which meet all the requirements of these regulations within which the transferred densities have been included and amended.
3. The proposed development meets all concurrency requirements at the level of impact calculated to include the density transfer.
4. If the transfer is between two private parties, at the time the transfer is approved, the entire sending area from which transfers will occur shall be subject to a conservation, open space, or agriculture easement, recorded and identified on the Zoning Map. Pending recording of the TDR easement, no development approvals or development permits will be issued for the receiving area.
5. The proposed development and density are compatible with the surrounding area and land use.

D. Conditions. The City Manager or designee or the Planning Commission may recommend and the City Commission may impose such conditions in approval of a transfer of

development rights and designation of receiving area that are necessary to accomplish the purposes of the Comprehensive Plan and these regulations to prevent or minimize adverse effects upon the community.

E. Notification to Property Appraiser's office. Upon approval of the receiving area and recording of deeds of transfer and conservation easements the City Manager or designee shall notify, within five working days, the Property Appraiser's office in writing that property development rights have been transferred from the sending area to the receiving area in perpetuity and that:

1. The seller shall be entitled to reduction of taxes consistent with the development rights retained, if any, and the TDR easement placed on the property; and
2. The development rights transferred shall run with the receiving parcel and the parcel shall be reassessed at the approved density.

Section 7.12.09. City-initiated land use amendment.

Concluding the transfer of development rights and providing that all standards have been met and deeds of transfer and conservation easements recorded, the City administrative staff shall initiate a City Comprehensive Plan Future Land Use Map amendment to accurately reflect the use of the sending area parcel as Conservation or indicate that a TDR easement exists. The receiving area shall be designated the Future Land Use designation that reflects the approved density.

Section 7.12.10. Accounting for TDR density.

The City Manager or designee shall implement and maintain an "accounting" system for monitoring density transfers in the transfer of development rights program.