

Local Law P of 2022

A Local Law amending Chapter 140 of the Code of the Town of Rochester

Section 1. Chapter 140 Amendment

Chapter 140 of the Code of the Town of Rochester shall be amended.

Subsection **§ 140-34. Transfers of density rights (TDR)** shall be amended as follows.

Section 2. § 140-34. Transfers of density rights (TDR)

§ 140-34. Transfers of density rights (TDR)

A. The Transfer of Development Rights (TDR) is based on the concept that ownership of land gives the owner a “bundle of rights,” each of which may be separated from the rest. For example, one of the “bundle of rights” is the right to develop land. With a TDR system, landowners are able to retain their land, but sell the development rights for use on other properties. TDR has been most often applied for preservation of farmland in New York. Under common TDR systems, a farmer is able to keep the land in agriculture by selling the property’s development rights, which are then used on non-agricultural land.

B. Purposes. This section is intended to:

1. Encourage the permanent preservation of important farmland and environmentally sensitive areas;
2. Direct growth to locations where central sewage disposal services are available; and
3. Provide a voluntary method for landowners to be compensated by the free market to preserve their land.

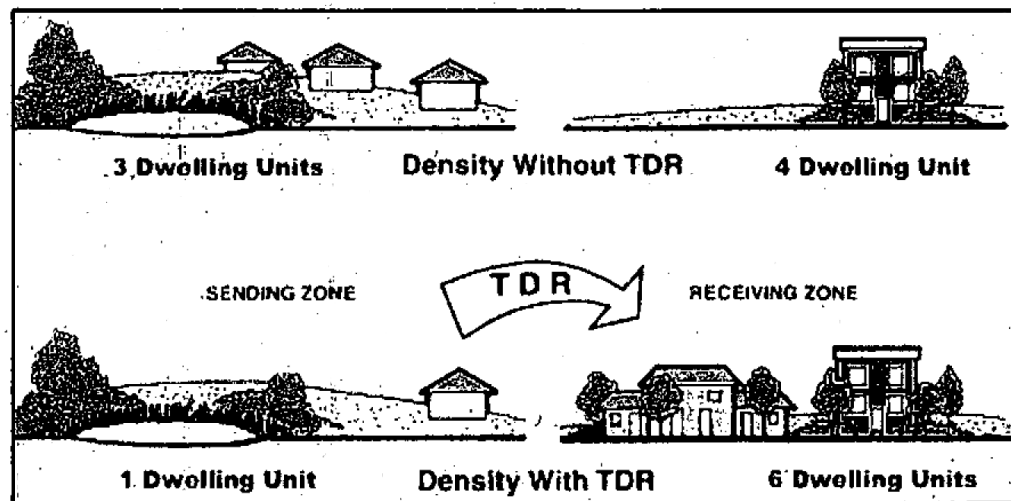
C. Special definitions. As used in this section, the following terms shall have the meanings indicated:

RECEIVING PROPERTY - A lot(s) that is approved to permit a higher density than would otherwise be permitted as a condition of the restriction of development on the sending property through a conservation easement.

SENDING PROPERTY - A lot(s) or portion of a lot that is restricted by a conservation easement or farmland preservation easement as a condition of approval of a higher density on the receiving property than would otherwise be permitted.

D. Applicability.

1. Owners of sending and receiving properties may voluntarily commit to transfer residential density rights under this chapter. Although the transfer of density rights shall only officially occur at the time of final approval of a subdivision or site plan, the process shall be initiated during the preliminary planning process. The approval of a preliminary plan shall then be conditioned upon compliance with this section. As part of a preliminary and final plan application, the applicant shall present a draft conservation easement on the sending property and a written, signed and notarized agreement by the owner of the sending property acknowledging and agreeing to the application.



2. The conservation easement shall be drafted so that it is binding if the receiving property is granted final plan approval. The conservation easement shall be recorded in the County Clerk's office at the same time as, or prior to, the final plan for the receiving property. If a final plan is recorded in phases, then the conservation easement may be recorded in corresponding phases.
3. The form of the conservation easement shall be acceptable to the Town Board based upon review by the Town Attorney and Planning Board and/or New York State DEC if applicable. The term "conservation easement" shall include, but not be limited to, an agricultural conservation easement. In the case of agricultural land, the standard language for an agricultural conservation easement used by the Ulster County Agricultural and Farmland Protection Board may be utilized. The easement shall limit the development of the sending property to agricultural and open space uses and associated accessory activities and any residual residential density not transferred to the receiving property.
4. A sending property shall be within the AB-3, AR-3, AR-10, PL-10, NR or R-5 District. A sending property shall have a minimum lot area of 10 acres.

5. A receiving property shall be within the AB-3, ~~AR-3~~, B, H, R-1, or R-2 ~~or R-5~~ Districts. Preference shall, ~~in the case of AR-3 and R-5 Districts,~~ be given to applications for projects adjacent to ~~or within the~~ B, H, and R-1 Districts, where such development will serve to strengthen centers.
6. Once a conservation easement is established, it shall be binding upon all current and future owners of the sending property. The applicant for the receiving property is responsible to negotiate with, and pay compensation to, the owner of the sending property for the conservation easement. Such transaction shall occur privately, and the value shall be determined by the private market. The Town shall be under no obligation to pay the owner of the sending property.
7. The right to develop a sending property may also be purchased by or donated to an established incorporated nonprofit conservancy organization whose mission includes preservation of agricultural land or natural features. A permanent conservation easement shall, in such case, be established on the sending property at the time of such purchase or donation. The right to develop such dwelling units may be held for a maximum of five years, before being used on a receiving property(ies).

E. Determination of density.

1. Yield plans shall be presented by the applicant. One yield plan shall be presented for the receiving property and one for the sending property. Such yield plans shall be a level of detail typically found in a sketch plan, including potential lots and roads, steep slopes, 100-year floodplains and suspected wetlands. Such yield plans shall estimate the number of new dwelling units that could be lawfully constructed on each property under Town regulations without any transfer of development rights. Detailed percolation tests are not required on all potential lots but deep pit soil testing may be required in areas of suspected marginal soil types for subsurface sewage disposal.
2. Such yield plans shall be reviewed by the Town Planning Board, with advice by the Town Engineer, to determine whether each represents a reasonably accurate estimate of the number of dwelling units possible on each site, both physically and legally. If such estimates are determined to not be accurate, the applicant shall be required by the Planning Board to revise such yield plan.
3. Based upon the yield plans, permission to develop a number of dwelling units may be transferred from the sending property to the receiving property. The potential to develop some or all of the dwelling units may be transferred from the sending property, depending upon the amount of land affected by the permanent conservation easement.

4. If, for example, the yield plan determines that 10 new dwelling units would be allowed under current zoning on the sending property, and the sending property will be preserved by a conservation easement, then the right to develop 10 additional dwelling units shall be transferred to the receiving property. The development of the receiving property shall still comply with all other requirements of this chapter, except for the maximum density, which shall be regulated by this section.
 5. The receiving property shall be permitted to include the increased total number of dwelling units above the number that would otherwise be permitted, as approved by the Town Planning Board based upon the yield plan, provided that density shall not be increased by more than 50% under any circumstance (including any other incentives). Yard requirements may also be reduced, but in no instance to less than 20 feet for the front yard and 10 feet for the side and rear yards, except in instances where zero-lot line development is proposed with compensating yards on the opposite side. Also, no more than 35% of any acre outside an R-1 District shall be covered with impervious surface in the form of access drives, parking areas or structures.
 6. Utilities. To receive a transfer of density rights, all lots of less than one acre on the receiving property shall be served by a central or communal sewage system.
 7. The transfer of density rights shall not be combined with incentives concerning conservation subdivision development, nor shall any transfer increase the density of a manufactured home park.
- F. Once a conservation easement is established under a transfer of density rights, it shall be permanent, regardless of whether the receiving property is developed. The approval to develop the receiving property in a higher density shall be treated in the same manner as any other final subdivision or site plan approval. The Planning Board may extend time limits to complete the development of the receiving property in response to a written request.
- G. As part of a transfer of density rights, the development of the receiving property shall comply with all Town of Rochester zoning requirements, except for provisions specifically modified by this section.

Section 3. Severability

If any part or provision of this local law is judged invalid by any court of competent jurisdiction, such judgment shall be confined in application to the part or provision directly on which judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Law or the application thereof to other persons or circumstances. The Town hereby declares that it would have enacted the remainder of this Law even without such part or provision or application.

Section 4. Effective Date

This local law shall become effective immediately upon the filing in the office of the New York Secretary of State pursuant to Section 27 of the Municipal Home Rule Law