

ORD. AMDT. 45, 09-10

AMENDING CHAPTER 10 OF THE DANE COUNTY CODE OF ORDINANCES,  
CREATING TRANSFER OF DEVELOPMENT RIGHTS (TDR) ZONING DISTRICTS

The County Board of Supervisors of the County of Dane does ordain as follows:

**ARTICLE 1.** Unless otherwise expressly stated herein, all references to section and chapter numbers are to those of the Dane County Code of Ordinances.

**ARTICLE 2.** Subsections **10.01(2k), (19q), (41m), (48w), (75m) and (78s)** are created to read as follows:

- (2k)** *Adopted town and county comprehensive plan* means a town comprehensive plan adopted by both the affected town board and the Dane County Board of Supervisors under s. 66.1001, Wis. Stats., and s. 10.255(1)(d) and Chapter 82, Subchapter II, Dane County Ordinances.
- (19q)** *Development right* means a potential new residential building site available under the policies of an adopted town and county comprehensive plan, subject to the standards of this ordinance and chapters 11, 17 and 75. For purposes of participating in a transfer of development rights program, a development right exists on a particular property if adopted town and county comprehensive plans would support a rezone petition to allow residential development on the property under s. 10.255 of this ordinance and ss. 59.69 and 91.48, Wis. Stats.
- (41m)** *Notice document* is a recorded instrument to notify future landowners and others of unusual features, policies, regulations or other characteristics that may affect future development potential or other speculative use of a specific property. All notice document instruments must meet the minimum recording standards of the Dane County Register of Deeds.
- (48w)** *Recorded* means recorded with the Dane County Register of Deeds.
- (75m)** *TDR agricultural conservation easement* means a holder's non-possessory interest in real property imposing any limitation or affirmative obligation, the purpose of which may include any or all of the following: retaining or protecting natural, scenic or open space values of real property; assuring the availability of real property for agricultural, forest, recreational or open space use; protecting natural resources; maintaining or enhancing air or water quality; preserving a burial site, as defined in [s. 157.70\(1\)\(b\)](#), Wis. Stats.; or, preserving the historical, architectural, archaeological or cultural aspects of real property. TDR agricultural conservation easements need not include any requirements for public access or restrictions on agricultural or forestry practices.
- (78s)** *Transfer of development rights (TDR)* means the conveyance of development rights, as defined herein, by TDR agricultural conservation easement from one parcel of land to another and the recording of that conveyance with the Dane County Register of Deeds and other land records of Dane County. Any individual transfer of development rights transaction may, at the discretion of the parties involved, also include the conveyance of additional rights not enumerated in this ordinance.

**ARTICLE 3.** Section 10.02 is amended to read as follows:

**10.02** DISTRICTS. The following districts are established. The number, shape and area are best suited to carry out the purposes of this ordinance:

- R-1 Residence District.
- R-1A Residence District.
- R-2 Residence District.
- R-3 Residence District.
- R-3A Residence District.
- R-4 Residence District.
- RH-1 Rural Homes District.
- RH-2 Rural Homes District.
- RH-3 Rural Homes District.
- RH-4 Rural Homes District.
- RE-1 Recreational District.
- B-1 Local Business District.
- A-1 Agriculture District.
- A-1 Exclusive Agriculture District.
- A-B Agriculture-Business District.
- A-2 Agriculture District.
- A-3 Agriculture District.
- C-1 Commercial District.
- C-2 Commercial District.
- LC-1 Limited Commercial District.
- EXP-1 Exposition District.
- M-1 Industrial District.
- CO-1 Conservancy District.
- HD Historic Overlay District.
- TDR-S Transfer of Development Rights Sending Area Overlay District.
- TDR-R Transfer of Development Rights Receiving Area Overlay District.

**ARTICLE 4.** Section 10.158 is created to read as follows:

**10.158** TDR-S TRANSFER OF DEVELOPMENT RIGHTS SENDING AREA OVERLAY DISTRICT. This district is in effect in those towns which voluntarily make the election under sub. (2)(b) below.

- (1) *Statement of purpose.* The purposes of the TDR-S overlay district are to:
  - (a) *Support Transfer of Development Rights, as follows:*
    1. establish a county-wide framework which allows a participating municipality to transfer development rights within or outside its jurisdiction;
    2. reduce spot development of rural land;
    3. encourage efficient transportation planning by reducing truly scattered development;
    4. encourage environmental preservation by enhancing open space;
    5. preserve and enhance property rights;

6. provide support and input into the agricultural community by encouraging the preservation of large intact agricultural areas in some locations and individual farms in other areas;
  7. direct development in rural areas away from areas planned for long-term agricultural use;
  8. provide a potential for compensation for individuals who do not want to develop their property or who live in communities which wish to restrict development;
  9. help Dane County and participating communities achieve the goals and objectives contained in adopted plans;
  10. facilitate purchase of development rights programs to protect high-priority natural or agricultural resources; and
  11. allow for towns, villages and cities to serve as a clearinghouse for development rights in accordance with adopted land use and comprehensive plans.
- (b) *Protect property rights.* Nothing in this section is intended to restrict, curtail or abridge the rights of property owners to use their property as currently permitted under ordinance, to petition the county board to rezone property or to apply for conditional use permits under ss. 59.69, 91.46 or 91.48, Wis. Stats., or s. 10.255 of this ordinance. A development proposal which is consistent with adopted plans is not objectionable on the grounds that it is not being undertaken with transferred development rights.
- (2) *Areas affected.*
- (a) *Lands to be included within the TDR-S Transfer of Development Rights Sending Area Overlay District.* This district is generally intended to apply to lands identified in adopted town and county comprehensive plans as suitable for:
1. long-term or permanent agricultural, conservation or natural resource use;
  2. limited or no non-farm development; and
  3. sending areas for a transfer or purchase of development rights program.
- (b) *Applicability.*
1. This section shall apply only to those towns that have filed a resolution with the county clerk indicating the election of the town to come under provisions of this district.
  2. This section shall apply only within the A-1 (Exclusive Agriculture) or CO-1 zoning districts.

- (3) *Permitted uses.*
  - (a) All permitted uses in the underlying zoning district.
  - (b) Transfer of development rights consistent with, and at a ratio determined by, an adopted town and county comprehensive plan. Any transferred development rights must be accompanied by a recorded TDR agricultural conservation easement placed on the sending property. The recorded easement must include a legal description of the sending property in accordance with adopted town and county comprehensive plan guidelines, must detail the number of rights transferred or sold, and must describe any receiving property or properties. TDR agricultural conservation easements must list, at a minimum, the county and the town as parties with enforcement rights and must require, at a minimum, the county, the town and the landowner to agree to any amendment of the agricultural conservation easement in writing and after at least one public hearing held by the zoning committee. All such amendments shall be recorded. No third parties with enforcement rights may be added without approval of the Town and the County.
- (4) *Conditional uses in the TDR-S Transfer of Development Rights Sending Area Overlay District.* All conditional uses in the underlying zoning district.
- (5) *Area regulations.* All lots in the TDR-S overlay district must meet the minimum lot size of the underlying zoning district or meet the requirements for a non-conforming lot of record under s. 10.16(3)(a) of this ordinance.

**ARTICLE 5.** Section 10.159 is created to read as follows:

**10.159** TDR-R TRANSFER OF DEVELOPMENT RIGHTS RECEIVING AREA OVERLAY DISTRICT. This district is in effect in those towns which voluntarily make the election under sub. (2)(b) below.

- (1) *Statement of purpose.*
  - (a) The purposes of the TDR-R overlay district are to:
    - 1. establish a county-wide framework which allows a participating municipality to transfer development rights within or outside its jurisdiction;
    - 2. encourage the clustering of rural development;
    - 3. encourage the efficient provision of services by clustering residential units;
    - 4. encourage efficient transportation planning by encouraging compact development;
    - 5. support planning of development in areas which have less impact on key resources;
    - 6. preserve and enhance property rights;
    - 7. encourage rural housing that is adequate and affordable for persons from a range of incomes;

8. facilitate development in rural areas of towns already experiencing or seeking development;
9. encourage the efficient use of land that has no history of, or is no longer suitable for, agriculture; and
10. help Dane County and participating communities achieve the goals and objectives contained in adopted plans.

(2) *Areas affected.*

(a) *Lands to be included within the TDR-R Transfer of Development Rights Receiving Area Overlay District.* This district is generally intended to apply to lands identified in adopted town and county comprehensive plans as suitable for:

1. residential development at a density exceeding one dwelling unit per 35 acres; and
2. receiving areas for a transfer of development rights program.

(b) *Applicability.*

1. This section shall apply only to those towns that have filed a resolution with the county clerk indicating the election of the town to come under provisions of this district.
2. This section shall apply only within the A-1, A-2, A-2 (1), A-2 (2), A-2 (4), A-2 (8), R-1, R-1A, R-2, R-3, R-3A, R-4, RH-1, RH-2, RH-3 or RH-4 zoning districts.

(c) *Applicability near incorporated municipalities.* The county board may not rezone to the TDR-R overlay district any parcel wholly or partially within the extraterritorial plat review jurisdiction of an incorporated municipality, as defined in s. 236.02(5), Wis. Stats., unless consistent with an adopted town and county comprehensive plan. If there are inconsistencies between the comprehensive plans of the town and the incorporated municipality with extraterritorial jurisdiction, prior to county board action the town and municipal governments must resolve the inconsistencies, following the dispute resolution process set forth in their respective comprehensive plans as required by s. 66.1001(2)(g), Wis. Stats.

(3) *Permitted uses.* All permitted uses in the underlying zoning district, provided all of the following criteria are met:

- (a) Each new dwelling unit is accompanied by transferred development rights from a parcel or parcels in the TDR-S overlay district consistent with, and at a ratio determined by, an adopted town and county comprehensive plan.
- (b) All transferred development rights in (a) above are from TDR-S overlay districts within the same town as the proposed dwelling unit, unless inter-town

- transfers are expressly authorized in adopted town and county comprehensive plans for both the sending and receiving towns.
- (c) The landowner records a notice document for each new dwelling unit that details the number of development rights transferred, describes the sending property or properties, and references the recorded document number of the TDR agricultural conservation easement required under s. 10.158(3)(b).
  - (d) Copies of any recorded notices and copies of recorded TDR agricultural conservation easements on the sending parcel or parcels in the TDR-S district, must be provided to the zoning administrator before zoning permits will be issued.
- (4) *Conditional uses.* All conditional uses in the underlying zoning district, provided all of the following criteria are met:
- (a) Any application for a conditional use permit in the TDR-R overlay district that would increase the number of permanent dwelling units, except for those uses listed in paragraph (b) below, is accompanied by transferred development rights from a parcel or parcels in the TDR-S overlay district consistent with, and at a ratio determined by, an adopted town and county comprehensive plan.
  - (b) *Exceptions.* The following conditional uses are not considered an increase in the number of permanent dwelling units and do not require a transferred development right:
    - 1. community living arrangements, as defined in s. 10.01(16);
    - 2. dependency living arrangements, as defined in s. 10.01(19a);
    - 3. extended care facilities, as defined in s. 10.01(22); and
    - 4. nursing homes, as defined in s. 10.01(42).
  - (c) All transferred development rights in (a) above are from TDR-S overlay districts within the same town as the proposed dwelling unit, unless inter-community transfers are expressly authorized in adopted town and county comprehensive plans for both sending and receiving areas.
  - (d) The landowner records a notice document that details the number of development rights transferred, describes the sending property or properties and references the recorded document number of the restrictive covenant required under s. 10.158(3)(b).
  - (e) Copies of any recorded notices, and copies of recorded TDR agricultural conservation easements on the sending parcel or parcels in the TDR-S district, must be provided to the zoning administrator before zoning permits will be issued.

Adopted by the Dane County Board of Supervisors February 4, 2010.

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