
TRANSFERABLE DEVELOPMENT CREDITS

Livermore Development Code Section 4.02.060

The portions of this section in italics are repeated from the North Livermore Urban Growth Boundary Initiative and are not subject to amendment except by voter approval.

A. **References, purpose and definitions.**

1. The ordinance codified in this section, as amended from time to time, may be cited as the “transferable development credits ordinance” or the “TDC ordinance.”
2. This section is adopted to implement the land use goals of the City as set forth in the North Livermore Urban Growth Boundary Initiative (initiative) and the City of Livermore 2003-2025 General Plan.
3. This section shall govern and control the allocation, transfer and use of development credits between North Livermore and the City. Any contradiction, inconsistency or ambiguity between the requirements of this section and any other provision of the Livermore Development Code (LDC) shall be governed and controlled by the requirements of this section. If not specifically covered in this section, the provisions of the LDC shall apply.
4. *Purpose.* The transferable development credits ordinance is designed to be part of a multiple-component approach to open space preservation. *The purpose of this section is to protect the agricultural land and other valuable open space of North Livermore and other areas adjacent to Livermore from excessive and irremediably harmful development. This protection will:*
 - a. *Maintain existing agriculture and permit more intensive agriculture in North Livermore;*
 - b. *Preserve the natural qualities, wildlife, beauty, and peace of the open landscape, hills, and wetlands surrounding Livermore;*
 - c. *Prevent further sprawl by completing an urban growth boundary, which will direct permitted development to existing urbanized areas, thereby contributing to their vitality;*
 - d. *Reduce traffic congestion and hazard;*
 - e. *Limit air pollution and protect public health;*
 - f. *Avoid government expenditure of taxes for extended facilities and services;*
 - g. *Provide for outdoor recreation for residents of the area; and*
 - h. *Generally safeguard the special identity, heritage, and character of Livermore, and preserve the high quality of life in the City.*
5. Definitions.
 - a. “Baseline density” means the maximum density allowed in TDC receiving areas and TDC receiving zones when property owners choose not to use the TDC option. When property owners choose to use the TDC option, baseline density shall be calculated as

the maximum density allowed under the range of densities in the baseline component of the TDC receiving area general plan designation.

- b. "Baseline zoning" means the zoning in effect on TDC receiving area parcels consistent with the baseline density of the parcels.
- c. "North Livermore" is the area bounded by the Livermore Urban Growth Boundary, the City of Dublin Sphere of Influence Boundary on June 30, 2002, the Alameda-Contra Costa Counties boundary, Vasco Road, and the north and east boundary of the Vasco-Laughlin Specific Plan area, east of Vasco Road, on June 11, 2001.
- d. "Transferable development credits (TDCs)" means the credits granted under the initiative that may only be used in compliance with the initiative and this section.
- e. "TDC option" means the general plan designation and LDC requirements that apply when owners of property in TDC receiving areas and TDC receiving zones apply to exceed baseline density in compliance with all requirements.
- f. "TDC receiving area" means a general plan classification that allows baseline uses and densities when property owners choose not to use the TDC option, but provides for higher-than-baseline density and alternative development regulations when property owners elect to use the TDC option.
- g. "TDC receiving zone" means a zoning district that allows baseline uses and densities when property owners choose not to use the TDC option, but provides for higher-than-baseline density and alternative development regulations when property owners elect to use the TDC option.
- h. "TDC-retiring unit" is a dwelling unit that qualifies to receive an allocation under the City's housing implementation program.
- i. "TDC sending area" is the North Livermore area described in the initiative and the 2003-2025 General Plan in which property owners can choose to record easements, create TDCs and transfer TDCs in compliance with this section.

B. TDC sending areas.

- 1. The TDC sending area includes all properties within North Livermore. *Property owners may chose to participate in the program, even though their property has not been annexed to Livermore.*
 - a. Transferable development credits shall be granted by the City to property owners in North Livermore, by rule in accordance with this section, in number and manner to accomplish the objectives of the North Livermore Urban Growth Boundary Initiative (hereafter, the "initiative"). The City Council shall grant credits on the following bases:
 - (1) One credit for each full five acres;
 - (2) Eleven credits for an owner forgoing the right to create an additional parcel under the initiative;
 - (3) Ten credits for an owner forgoing the right to any dwelling units on a parcel, which forbearance shall also include the right to any dwelling units on one of the parcels resulting directly or indirectly from any permitted subdivision of that parcel;
 - (4) Twelve credits for elimination of existing dwelling units and residential accessory structures on a parcel and for the owner forgoing the right to any dwelling units on

that parcel, which forbearance shall also include the right to any dwelling units on one of the parcels resulting directly or indirectly from any permitted subdivision of that parcel.

- (5) *Duplicate credits may not be granted with respect to the same acreage or right forgone, regardless of changes in ownership. Credits given under subsections (B) (1)(a)(2), (3), or (4) of this section may be relinquished to the City prior to use or initial transfer and, if no gift is intended, the right to create a parcel, to build or rebuild as permitted by the ordinance regained and the corresponding easement conveyed under subsection (e) reconveyed. Credits given under subsection (B) (1)(a)(2) of this section may occur over time and credits may be granted under subsection (B)(1)(a)(2), (3) or (4) of this section at a later time than credits granted under subsection (B)(1)(a)(1) on an individual parcel; provided, that duplicate credits are not granted.*
- b. Development credits cannot be used in the TDC sending area or in any manner not expressly allowed by this section.
 - c. Credits may be sold or purchased, or otherwise transferred or received, by any person including the City and other governmental entities. The City may use funds available for that purpose to buy credits, including a revolving fund replenished by the sale of credits. The City may buy and sell credits to establish and maintain an efficacious market for the credits, or to extinguish them. (Extinction of credits may be part of a more general City program to purchase development rights.)
 - d. Development credits may only be used within TDC receiving zones or to qualify development projects for housing allocations as regulated by this section.
 - e. As a precondition for the grant of development credits under subsection (B) (1) of this section, the owner shall convey an easement, which runs with the land, to the City and, if available, jointly to an independent land trust that meets the standards of Section 19 of the initiative. As provided in Section 19 of the initiative, the easement shall be negative only. If credits are granted under (a)(1) [of the initiative], the easement shall bar any future land division, development or use not permitted by initiative on the parcel where the acreage is located. If credits are granted for forgoing the right to create a parcel under (a)(2)[of the initiative], the easement shall relinquish that right permanently. If the credits are granted under (a)(3) or (a)(4) [of the initiative] for foregoing all dwelling units on a parcel, the easement shall relinquish the right to any dwelling units or any other development on the parcel, or on one of the parcels resulting directly or indirectly from any permitted subdivision of that parcel, except development under Section 12(2) [of the initiative] for agricultural use and under Section 12(3) [of the initiative] for the packaging, processing, storage or sale of produce or plants as set forth in the Initiative. Easements shall be duly recorded in the county land records.
 - f. Credits shall not be granted and easements shall not be acquired for properties which are subject to other agricultural or open space easements or similar restrictions that have barred or forgone land division, development or uses substantially the same as that which would be barred or forgone as described in subsection (B)(1)(e) of this section. Conversely, credits may be

granted and permanent easements acquired on land that has less restrictive easements.

2. The City shall establish appropriate means to inform persons about the development credits program and to facilitate transfer of credits from transferors to transferees. The City shall have procedures and requirements to ensure that it has accurate records of development credit grants, transfers and use. Administrative procedures shall include but not necessarily be limited to the following: application requirements, easement components, processing steps and documentation of credit issuance, transfer and redemption.

C. **TDC receiving areas.** TDC receiving areas are identified in the 2003-2025 General Plan or any subsequent general plan amendments that allow for new residential land use designations or increases in residential density. When properties are within specific plan areas, the specific plan for that area shall set forth TDC provisions, if any. TDC receiving area general plan designations establish baseline uses and densities. When properties are within specific plan areas, the specific plan for that area shall set forth TDC provisions, if any. Owners of land with a general plan designation of TDC receiving area who do not choose to exceed baseline density may decline the TDC option and continue to use their property in compliance with existing zoning. (See additional requirements in subsection (E) of this section regarding TDC receiving areas with industrial baseline zoning.) Alternatively, owners of property with a TDC receiving area general plan designation may choose the TDC option and exceed baseline density when the zoning of their land has been changed to a TDC receiving zone and all requirements of that zoning district including the TDC requirements of Subsection (D) of this section have been complied with. The three types of TDC receiving zones are set forth below.

1. TDC combining district. The TDC combining district is a zoning district that implements the provisions of a TDC receiving area general plan designation when a property owner chooses to use the TDC option.
 - a. Owners who elect not to use the TDC option shall comply with all use and development regulations that apply within the zoning district corresponding to the baseline classification of the TDC receiving area general plan designation.
 - b. Owners who elect to use the TDC option shall comply with all use and development regulations that apply within the zoning district corresponding to the TDC combining district of the TDC receiving area general plan designation as well as all other requirements of this section including the TDC requirements of subsection (D) of this section.
 - c. The TDC option is only available to developments that achieve the density range set forth in the corresponding TDC receiving area general plan designation.
2. Planned development district. Owners of property with a TDC receiving area general plan designation may use the TDC option by applying for a planned development district or PD see Chapter 3.04.030 (Planned Development Zone). To use the TDC option, the PD shall incorporate all provisions of the corresponding TDC receiving area general plan designation and this section including, but not limited to, adherence to the residential density range called for in the general plan and compliance with the TDC requirements

set forth in subsection (D) of this section.

- 3 Zoning districts incorporating TDC. When the City has created zoning districts that independently implement all provisions of a TDC receiving area, the zoning of a property within a corresponding TDC receiving area may be changed to that TDC receiving zone. Following the change of zoning, owners may decline to use the TDC option and continue to use the property under the baseline zoning and density set forth by the applicable TDC receiving zone. Alternatively, owners may choose to use the TDC option and exceed the baseline density in compliance with all regulations of the TDC receiving zone including the TDC requirements set forth in subsection (D) of this section.

D. **TDC requirements.** To exceed baseline density in a TDC receiving zone, owners shall submit:

1. Two TDCs for each single-family detached dwelling in excess of baseline density (or one TDC for each single-family detached dwelling in excess of baseline density for developments with applications accepted as complete prior to January 26, 2004); and
2. One-half TDC for each multi-family attached dwelling in excess of baseline density; or
3. Payment of the TDC in lieu fee for each required TDC.
4. The TDC in lieu fee is contained in the City's fee schedule. The TDC in lieu fee shall be reviewed not less than bi-annually. The City Council may amend the TDC in lieu fee as necessary.
5. Revenues from TDC in lieu fees shall be used for the acquisition of TDCs from North Livermore. Other than TDC acquisition, revenue from TDC in lieu fees shall only be used for costs incurred in administering the TDC program including but not necessarily limited to facilitating TDC transactions, preparing/recording TDC easements monitoring/enforcing easements and maintaining records. TDC in lieu fee revenues may be used to offset the administration costs incurred by the City and/or by a land trust authorized by the City to administer portions of the TDC program.

E. **Special requirements.** TDC receiving areas with an industrial baseline classification in the TDC receiving area general plan designation shall not be rezoned as a TDC combining district unless all properties within the TDC receiving area are rezoned as a TDC combining district. After the TDC receiving area has been rezoned, an owner of property within this zone may elect to use either the baseline zoning or the TDC option on any single lot. If the first lot to be developed in this TDC receiving zone uses the residential TDC option, all future uses and structures on other lots within the TDC receiving area that are only allowed under the baseline industrial zoning shall be conditional uses and shall require approval of a Conditional Use Permit as provided under Chapter 9.03. If the first lot to be developed in this TDC receiving area uses the industrial baseline zoning, future use of the residential TDC option on other lots within this TDC receiving area shall be conditional uses and shall require approval of a Conditional Use Permit as provided under Chapter 9.03. The City Council shall place conditions on uses, site plans and building design as needed to maximize compatibility between industrial and residential developments pursuant to the findings required by Chapter 9.03.

F. Satisfaction of TDC requirements.

- 1 When a final subdivision map would create an entitlement to exceed baseline density in a TDC receiving zone, submission of the required number of TDCs or payment of the corresponding TDC in lieu fee must be a condition of approval placed on the tentative map. This condition shall be satisfied prior to final map approval.
- 2 When site plan approval would create an entitlement to exceed baseline density in a TDC receiving zone, submission of the required number of TDCs or payment of the corresponding in lieu fee must be a condition of approval. This condition shall be satisfied prior to issuance of building permits.
- 3 City Council may, by resolution, adopt administrative guidelines to provide a special fee deferral program in response to unprecedented conditions such as extraordinary economic changes.

G. TDC requirements for affordable housing units. Housing units that are covered by an affordable housing agreement with the City shall be exempt from the TDC requirements. Affordable housing units may include very low- and low-income units provided under state law as implemented through section 6.02.030 (Density Bonuses), affordable units provided consistent with other general plan policies, or units provided consistent with the City's inclusionary housing requirements in Chapter 10.06 (Affordable Housing).

H. Housing allocations for TDC-retiring units. An average of up to 200 TDC-retiring units per year shall be granted allocations under the housing implementation program for a period of 10 years (2005-2014) ending on December 31, 2013. A maximum of 2,000 TDC-retiring units shall be allocated during this 10-year period. TDC-retiring units granted allocations are not required to participate in the City's annual, competitive HIP process for the first 10-year cycle but will be counted as part of the City's overall growth rate. Unused allocations for TDC-retiring units in the first 10-year cycle may be carried over into subsequent years. After January 1, 2014, the number of TDC retiring units granted additional allocations will be subject to the City's adopted growth rate.