BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA:

In the matter of:

Adding Chapter 8.34 to the Town of Moraga	**)**	**ORDINANCE NO. DRAFT**
Municipal Code to establish minimum	**)**	
Twenty Dwelling Unit per Acre (20 DUA)	**)**	
Residential Districts.	**)**	

THE TOWN COUNCIL OF THE TOWN OF MORAGA DOES HEREBY ORDAIN:

SECTION 1. Title 8, Chapter 8.34, entitled "TWENTY UNITS PER ACRE RESIDENTIAL DISTRICT" is hereby added to Title 8 (Planning and Zoning) of the Town of Moraga Municipal Code to read as follows:

Chapter 8.34

TWENTY DWELLING UNIT PER ACRE RESIDENTIAL DISTRICT (R-20)

Article 1. General Provisions for the R-20 Residential District (Map Symbol R-20)

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Article 1: General Provisions for the R-20 Residential District (Map Symbol R-20)

8.34.010 Purpose.

The purpose of this article is to establish regulations and procedures for all development projects located in the 20 dwelling unit per acre residential district. This District shall only be applied to properties within the Moraga Center Specific Plan Area, consistent with policies of the adopted specific plan. This District shall not be applied to properties which have an average predevelopment slope in excess of 20%. Development projects within this district shall be subject to either the Ministerial Review Process or the Discretionary Review Process as provided for in this Chapter.

8.34.020 Definitions.

"Area A" means the 6.135-acre area of the R-20 District designated as Area A on _____.

"Area B" means the balance of the property included in the R-20 District designated as Area B on _____.

“Density Bonus” means an increase in the established residential density in accordance with Government Code section 65915 *et seq.*

“Dependent Senior Residential Dwelling Unit” means a “Residential Dwelling Unit” without provisions for cooking within the unit, provided that 100% of the housing meets the requirements of Section 51.3 of the California Civil Code and that cooking and eating facilities are provided on site**.**

"Discretionary Review Process" means the review processes identified in MMC Chapter 8.72, and 8.48 and 8.132, if applicable.

"Ministerial Review Process" means the review process identified in Section 8.34.080 of this Chapter.

“Residential Dwelling Unit” means a building or area within a building that provides complete independent living facilities for one or more persons including permanent provisions for living, sleeping, cooking, eating, and sanitation. A motor home, trailer, camper, dormitory room, motel or hotel room, suite or extended stay unit is not a Residential Dwelling Unit.

“Senior Citizen Housing” means a project consisting of Residential Dwelling Units designed for senior citizens as defined in Section 51.3 of the California Civil Code.

“Site” means the contiguous gross land area within the parcel or parcels on which housing development is located.

8.34.030 Permitted Uses.

A. Residential Dwelling Units in accordance the provisions of this chapter.

B. Dependent Senior Residential Dwelling Units in accordance with the provisions of this chapter.

C.. Accessory Structures and Uses incidental to the Dependent Senior and Residential Dwelling Units such as parking, laundry, dining, grooming, healthcare and recreation facilities for the exclusive use and enjoyment of the Dependent Senior and Residential Dwelling Unit occupants and their guests.

8.34.235 Conditional Uses

A. Development projects which are subject to the Discretionary Review Process may include other residential and/or non-residential uses determined by the Planning Commission to be consistent with the purpose of the district and compatible with surrounding existing uses.

8.34.040 Density.

A. The minimum number of Residential Dwelling Units allowed in this district is twenty (20) per acre, except that projects subject to the Discretionary Review Process shall have no minimum density.

B. The maximum number of Residential Dwelling Units allowed in this district is twenty (20) per acre plus any applicable Density Bonus up to a maximum of twenty-seven (27) per acre, except as follows:
(1) Housing for senior citizens shall have a maximum density of 30 Residential Dwelling Units per acre plus an additional 3 Dependent Senior Residential Units per acre.

(2) The number of Dependent Senior Residential Units per acre allowed under Section 8.34.040B(1) may be increased by a ratio of 3 Dependent Senior Residential Dwelling Units for each reduction of 1 Residential Dwelling Unit per acre below the 30 permitted, up to a maximum of 9 such Dependent Senior Residential Dwelling units.

8.34.050 Permit and Payment Required.

A. No person shall develop, demolish, install, remove, or construct any improvement on any parcel within the R-20 District without a permit obtained pursuant to the specific provisions set forth in this chapter unless the activity is related to a legally existing non-conforming use in accordance with MMC Chapter 8.20. Nothing in this chapter shall be interpreted or applied to require the discontinuation of existing lawful uses on property in the R-20 District.

B. Prior to the issuance of any permit, all required fees and/or deposits shall be paid.

8.34.060 Development Standards.

A. All development shall meet or exceed the **minimum** requirements identified in the table below:

	Development Standard	Minimum Requirement
1.	Site Area	3 acres except that projects subject to Ministerial Review may be a minimum of 2 acres provided that at least 50 dwelling units are proposed for development.
2.	Number of Residential Dwelling Units	60
3.	Square Feet Per Residential Dwelling Unit	300
4	Square Feet Per Dependent Senior Residential Dwelling Unit	100
5.	Average Site Width	200 feet
6.	Average Site Depth	200 feet
7.	Site Building Setback	20 feet from all Site boundaries to any architectural projection on a building.
8.	Creek Building Setback	50 feet from top of bank or 50 feet from the edge of riparian vegetation that is protected by a state or federal agency, whichever is greater to any architectural projection on a building except that projects subject to Discretionary Review shall at a minimum comply with the setbacks required by any state or federal agency.
9.	Pervious surface area (including natural or landscaped area)	30% of site area
10.	Natural area or area landscaped area with living plants	20% of site area
11.	Private outdoor area for each Residential Dwelling Unit	20 square feet attached or immediately adjacent to each Residential Dwelling Unit with a minimum dimension of 4 feet.
12.	Number of required parking spaces	1 space per studio or 1-bedroom Residential Dwelling Unit, 2 spaces per 2- or 3-

		bedroom Residential Dwelling Unit, 2.5 spaces per 4 or more bedroom Residential Dwelling Unit and 0.3 spaces per Dependent Senior Residential Dwelling Unit.
13.	Parking for Senior Citizen Housing *(Example: A 150-unit senior citizen housing project could be served by: (a) 150 spaces; or (b) 113 spaces plus 1 permanent service vehicle; or (c) 75 spaces plus 2 permanent common service vehicles. A 50-unit senior citizen housing project could be served by: (a) 50 spaces; or (b) 38 spaces plus 1 permanent service vehicle; or (c) 25 spaces plus 2 permanent service vehicles.]*	The minimum parking ratio provided for in Section 8.34.060A(12) above, shall be reduced by 25% for each passenger vehicle made available permanently for use by the residents of each 75 such units or fraction thereof, provided that not less than 0.5 space shall be provided for each Residential Dwelling Unit served.
14.	Parking space dimensions	As required by Moraga Municipal Code Section 8.76.050

B. All development shall conform to the **maximum** limits identified in the table below:

	Development Standard	Maximum Limit
1.	Building Height	45 feet
2.	Lot Coverage by buildings	65% of project site area
3.	Lot Coverage by Impervious Surfaces (buildings, structures and hard paving)	70% of project site area
4.	Number of stories	3
5.	Floor area ratio (*Note: covered but unenclosed walkways and stairways are not included in the calculation of floor area.)*	1.15 when enclosed parking is provided, or .85 when uncovered or carport parking is provided and an additional .35 is allowed for common area facilities such as enclosed corridors, game room, dining room and facility kitchen.
6.	Private outdoor area for each unit	100 square feet attached or immediately adjacent to each unit with a maximum dimension of 10 feet; provided however that any such private outdoor area visible within 500 feet of a Major Scenic

		Corridor as defined in Chapter 8.132 shall be screened by landscaping and/or an opaque fencing or railing.
7.	Slope of Planted Area	33%

8.34.070 Design Requirements.

A. All development shall comply with the following requirements:

1. All improvements shall comply with all applicable easements, codes and requirements in effect at the time the development application is deemed or determined complete including but not limited to access and utility easements, fire, building, and health and safety codes, and local, state and federal laws.
2. No improvement shall be constructed or installed within an area of riparian vegetation that is protected by any state or federal agency.
3. The lowest floor of all new residential structures, including basement areas, shall be located at an elevation that is at least two (2) feet above the 100-year (1% annual occurrence) base flood elevation in accordance with MMC Section 8.108.120-C-1a.
4. The required parking for each Residential Dwelling Unit may be either tandem or non-tandem. Parking not associated with a particular Residential Dwelling Unit shall be non-tandem.
5. If a grading permit is required, it shall be in compliance with all provisions of Title 14 of the Moraga Municipal Code except Moraga Municipal Code Chapters 14.08, 14.12, and 14.16 and shall not be subject to discretionary review.
6. All exterior lighting shall be directed downward or inward toward the property.
7. All retaining walls, with the exception of building foundations, shall be no higher than five feet. If a fence is located within two feet of a retaining wall the combined retaining wall and fence height shall not exceed eight feet. There shall be no more than three new retaining walls running in the same direction located within fifty (50) feet of one another. The minimum distance between any two retaining wall is equal to the height of the wall and the area between the walls shall be planted.
8. Any blank wall that is without windows and is more than thirty (30) feet long or three hundred fifty (350) square feet in area, whichever is less, shall have landscaping installed and maintained along the wall which reaches a minimum height of four feet within three years.
9. All landscaping shall be irrigated with an automatic system and permanently maintained. A landscape maintenance bond shall be posted

to secure the replacement of any necessary plant material by the developer for a period of one (1) year.

10. Permanent trash and recycling equipment shall be located in enclosures on the property for use by the residents of the housing development . The colors, materials and design of the trash and recycling enclosures shall match the building design.

11. The utilities for the project shall be located underground.

12. No grading shall result in a slope steeper than 33%.

13. Three-story building elements visible from public streets or public facilities shall be designed with varied setbacks, articulated exterior forms, or architectural features which add detail, including, but not limited to pitched roofs with dormer windows, parapet walls, etc.

14. Pervious areas shall include the use of “semi-rural details,” such as curbless streets with bioswales, split rail fences, crushed gravel, irregular paving, and native ground cover and plant material.

15. If development is proposed within 500 feet of a Major Scenic Corridor as defined in Chapter 8.132:

a. Building setbacks from the Scenic Corridor shall be varied in order to avoid creation of a walled effect, with the setback for third floor elements increased by 50% above the minimum otherwise applicable in this District.

b. Grading or earth-moving shall be designed and executed in such manner that final contours transition smoothly with the adjoining natural grade. Exposed finished slopes shall be planted with materials selected to minimize the potential for erosion and to provide for visual compatibility with adjoining ground covers.

c. The number of access points to and from the scenic corridor shall be minimized consistent with traffic safety and project access and circulation needs.

d. All parking required under Sections 8.34.060A(12-13) shall be provided onsite. Parking on the scenic corridor roadways shall be minimized.

e. All existing specimen trees shall be identified on the plans submitted pursuant to Section 8.34.080A. Plans shall include measures to protect all such trees identified on the plans for preservation, including but not limited to placement of temporary construction fencing around the drip line of such trees.

16. All Residential Dwelling Units shall meet “Build It Green” or equivalent requirements applicable to all other similar housing in Moraga, in effect at the time the application for a permit is filed.
17. Sidewalks and pathways proposed to provide pedestrian access to adjacent neighborhoods and shopping centers shall be a minimum of five feet in width to encourage walking as a primary mode of transportation for local shopping trips.
18. External vents and mechanical equipment shall be screened from view from adjoining residential uses, public or common sidewalks and pathways, and plazas.
19. Permanent mechanical equipment such as a motor, compressor, pump or compactor which would represent a source of structural vibration or structure-borne noise in excess of adopted Town ordinance standards shall be shock mounted with inertia blocks or bases or vibration isolators.
20. Consistent with the Moraga Center Specific Plan, development shall not preclude emergency vehicle, motor vehicle, bicycle or pedestrian access to adjoining properties.
21. A minimum of two hundred (200) cubic feet of enclosed weather-proof and lockable private storage space in addition to guest, linen, pantry and clothes closets customarily provided shall be provided for each unit other than a Dependent Senior Residential Dwelling Unit.
22. A laundry area consisting of a place for an automatic washing machine and clothes dryer shall be provided in each unit unless common laundry facilities are provided.
23. Utility transformers that are outside the public right-of-way should have adequate access provided for proper maintenance. Any above ground installation must include adequate landscape screening so as not to be viewable from the scenic corridor or other prominent public view.
24. Benches and seat walls shall be incorporated by project designers, where appropriate, to provide seating areas along pedestrian promenades.
25. Bicycle parking areas and bicycle racks shall be provided in all housing projects consistent with anticipated need.
26. Tree grates, bollards, and other street furniture shall be incorporated, where appropriate, to help articulate street edges and provide a pleasant separation between the automobile realm and the pedestrian realm.
27. Accentuated paving, bollards, special crosswalk lighting, and other features shall be incorporated, where appropriate, to enhance pedestrian safety.
28. Drought-tolerant and deer resistant plant materials, consistent with the Town’s Design Guidelines shall be incorporated as part of the overall landscape design.

29. Bioswales shall be incorporated in parking areas as part of the overall landscape and storm drainage designs, to improve the quality of storm water runoff and to allow infiltration of storm water into the subgrade.

B. No exception to the regulations in Sections 8.34.060 or 8.34.070 is allowed for any development project which is subject to the Ministerial Review Process.

8.34.080 Approval Process.

A. All development projects located in Area A shall be subject to review and approval as provided for in Section 8.34.080B, except that a property owner may apply for an exchange from the Ministerial Review Process to the Discretionary Review Process in accordance with Article 2 of this Chapter, provided however, that: (1) a minimum of 6.135 acres of land in the R-20 District shall remain subject to the Ministerial Review Process; and (2) no property subject to the Ministerial Review Process shall be located at an elevation above 525 foot elevation.

B. Application for Ministerial Review. All applications for a Ministerial Review Permit shall include a completed application form and legible scaled drawings on paper measuring approximately 24 inches by 36 inches providing the following:

1. A location map;
2. A survey of the site including all property boundaries, rights-of-way and easements;
3. A topographic survey of the site at a contour interval of two feet and indicating all drainage ways, riparian vegetation, and proposed grading;
4. A site plan for the proposed development including all existing and proposed buildings, structures and coverage areas with setbacks and coverage calculations provided;
5. A landscape and planting plan including vegetation species, size, location, spacing and irrigation as well as hardscape materials and coverage calculations;
6. A plan identifying vehicular and pedestrian ways with grades, widths, and type of proposed improvements including but not limited to automobile and bicycle parking areas as well as benches, light fixtures and other such improvements;
7. A plan identifying existing and proposed access to and egress from the site;
8. A plan identifying existing and proposed utilities and surface drainage conditions and outlets;
9. Complete building elevations, sections and floor plans including architectural style, exterior colors and materials, dimensions, area calculations, room names, and number of each type of dwelling unit;

10. An exterior color and material palette that at a minimum includes a body, trim and accent color, and wall, window, door and roofing materials.

11. A description of sustainable practices to be used in the development of the project, including how the development will comply with the Town's green building requirements.

B.. Review, Approval and Changes in Approved Ministerial Review Approval Plans.

1. Duty to Review. The planning director shall review each application for a Ministerial Review Permit. The purpose of this review is to ensure that development is consistent with criteria adopted under this Chapter.

2. Public Notice. Written notice of the application for a Ministerial Review Permit shall be mailed to all property owners and residents within three hundred (300) feet of the proposed project. Such notice shall be given not less than ten (10) days before the date the application is scheduled for a decision by the planning director.

3. Procedure for Review. The planning director shall approve an application for a Ministerial Review Permit in the 20 Dwelling Unit Per Acre Residential District if all of the requirements of this Chapter have been satisfied. The planning director shall deny an application for any such permit if the requirements of this Chapter have not been satisfied.

4. Right to Appeal. Any interested person may appeal the decision of the planning director in accordance with the provisions of Moraga Municipal Code Chapter 8.12 Article 4. The appeal shall be limited to a consideration of whether the objective criteria in this Chapter have been met. The appellant shall pay for all Town costs associated with the notice and hearing on the appeal. However, if it is determined that the Town made an improper decision with respect to the application, then the Town shall pay its own costs to consider the appeal.

C. Changes. When a Ministerial Review development plan has been approved it shall not thereafter be changed except with the further review and approval by the prior final approving body, which may require another public hearing under MMC Section 8.12.060.

8.34.090 Variances.

No variance from the requirements of this article shall be allowed for any project which is subject to the Ministerial Review Process. A variance from the requirements of Section 8.34.060 and 8.34.070 may be allowed in accordance with MMC Section 8.12.130.

Article 2. Exchange

8.34.100 Exchange defined.

In this chapter unless the context otherwise requires, "exchange" means the application of the Ministerial Review Process to a parcel otherwise subject to the Discretionary Review Process, which shall require the application of the Discretionary Review Process to a parcel of the same size and otherwise subject Ministerial Review Process.

8.34.110 Exchange authorized

An owner of an undeveloped parcel of land in Area B may apply to develop such parcel subject to the Ministerial Review Process, provided an undeveloped parcel of land of equal size in Area A shall be made subject to the Discretionary Review Process and all other requirements of this Article shall be met. The exchange may occur between undeveloped parcels which are under different ownership or control.

8.34.120 Minimum area required.

The minimum exchange area for any parcel or portion of a parcel that is subject to an exchange is 3 acres.

8.34.130 Parcel boundary adjustment.

In the event that an exchange would result in portions of a single parcel being subject to the Ministerial Review Process while other portions would be subject to the Discretionary Review Process, the owner of such parcel may concurrently apply for a lot line adjustment or lot split in order to avoid the application of more than one code provision to any such parcel. No fees, dedications or other exactions shall be imposed as a condition of approval for such lot line adjustment or lot split application other than as may be necessary to comply with applicable law. No code provisions such as setback requirements or design guidelines such as coverage requirements shall be violated in the approval of any lot line adjustment or lot split.

8.34.140 Initiation of exchange.

The exchange process is initiated by an application by the owners of the parcels proposed for an exchange pursuant to this Article.

8.34.150 Findings required to approve exchange.

Before approving the exchange, the Planning Director must find that:

A. One parcel is located in Area A and the other parcel is located in Area B.
B. The exchange parcels are of equal area and do not contain any buildings.

C. The minimum area of any affected parcel including parcels involved in lot line adjustments or lot splits is 3 acres and has a minimum average width of 200 feet and minimum average depth of 200 feet.
D. No property subject to the Ministerial Review Process shall be located at an elevation above the 525 foot elevation
E. The exchange will not result in any of the provisions of Article 1 of Chapter 8.34 being violated except as specifically allowed by this Article.

8.34.160 Exchange instruments and notice of requirements.

A. The owners of the exchange parcels shall submit for approval by the Planning Director and Town Attorney copies of exchange instruments in a form acceptable to the Town and otherwise legally sufficient to effect an exchange.
B. A notice of the requirements for development of each parcel subject to an exchange pursuant to this chapter shall be recorded in the office of the county recorder. The notice shall be in the form prescribed by the town.

8.34.170 Costs.

All costs associated with the processing, consideration, approval and recordation of the exchange shall be paid by the applicants.

SECTION 2. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance. To this end, the provisions of this Ordinance are severable. This Town Council hereby declares that it would have adopted the Ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 3. Publication.

The Town Council may publish a summary of a proposed ordinance or proposed amendment to an existing ordinance. A summary shall be published and a certified copy of the full text of the proposed ordinance or proposed amendment shall be posted in the office of the Town Clerk at least five days prior to the Town Council meeting at which the proposed ordinance or amendment or alteration thereto is to be adopted. Within 15 days after adoption of the ordinance or amendment, the Town Council shall publish a summary of the ordinance or amendment with the names of those Town Council members voting for and against the ordinance or amendment and the Town Clerk shall post in the office of the Town Clerk a certified copy of the full text of the adopted ordinance or amendment along with the names of those Town Council members voting for and against the ordinance or amendment in accordance with Section 36933 of the California Government Code.

SECTION 4. Effective Date.

This ordinance becomes effective thirty (30) days after its final passage and adoption.

The foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Moraga held on xxxx, 2010~~09~~ and was adopted and ordered published at a regular meeting of the Town Council on xxxx, 2010~~09~~ by the following vote:

AYES: xxxx

NOES: xxxx

ABSTAIN: xxxx

ABSENT: xxxx

_____

Ken Chew~~Dave Trotter~~, Mayor

ATTEST:

_____

Marty McInturf, Town Clerk