

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the matter of:

**Amending Section 8.04.020:)
Definitions, and Amending Chapter)
8.92: Animals of Title 8, Planning and)
Zoning, of the Town of Moraga)
Municipal Code)**

ORDINANCE NO. 261

WHEREAS, on October 22, 2014 the Town Council accepted the Town’s Climate Action Plan (CAP), and directed staff to review the CAP annually and provide a recommendation to the Town Council on which of the strategies to implement as part of the Annual Work Plan and Budget Review; and

WHEREAS, the CAP includes strategy LU&T.8 which states “Encourage and allow individuals to raise food at home and in community gardens (e.g. vegetable gardens, orchard trees, and chickens) keeping with the Town’s semi-rural character.” This strategy includes an implementation measure for the Town to amend its zoning ordinance regulations on keeping chickens and livestock; and

WHEREAS, on February 11, 2015 staff brought several recommendations for the Annual Work Plan before the Town Council, which included drafting of a Small Farm Animal ordinance. The Town Council directed staff to move forward with the Small Farm Animal ordinance for the 2015/16 budget year; and

WHEREAS, staff worked with local volunteers and experts to update the existing animal ordinance to draft new regulations to allow for small animal farming accessory to residential uses to promote local food production; and

WHEREAS, the Planning Commission held a study session on August 17, 2015 at which the Commission heard public testimony and reviewed and provided feedback on the proposed ordinance amendments; and

WHEREAS, on October 19, 2015, the Planning Commission held a duly noticed public hearing, took public testimony on the proposed amendments to Section 8.04.020: Definitions and Chapter 8.92: Animals of Title 8, Planning and Zoning, of the Moraga Municipal Code; and

WHEREAS, following the public hearing on October 19, 2015, the Planning Commission adopted Resolution No.13-2015, recommending that the Town Council adopt proposed amendments to Section 8.04.020: Definitions and Chapter 8.92: Animals of Title 8, Planning and Zoning, of the Moraga Municipal Code.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF MORAGA DOES ORDAIN AS FOLLOWS:

SECTION 1: The Town Council hereby finds as follows:

A. The Town Council considered the proposed ordinance, took testimony from members of the public, and hereby finds that the ordinance is in compliance with the Moraga General Plan, the change proposed is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which it is approved, there is a community need for the ordinance and the ordinance conforms with public convenience, general welfare, and good zoning practice.

B. The proposed ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3): General Rule Exemption, since it can be seen with certainty that there is no possibility that the activity would have a significant effect on the environment. The proposed regulations impose a low limit on the number of Small Farm Animals that could be kept on a given parcel, as a function of gross lot area, and the existing rules and regulations of the Town and other agencies address animal welfare and potential nuisance issues for small farm animals, as they do for the keeping of pets such as cats and dogs.

SECTION 2: Moraga Municipal Code Section 8.04.020 – Definitions, “Livestock” of Moraga Municipal Code Title 8, Planning and Zoning is deleted in its entirety and replaced with the following:

“Livestock” includes horses, cattle, sheep, goats, turkeys, ostrich, emu, and other domestic farm animals.

SECTION 3: Moraga Municipal Code Section 8.92 – Animals, of Moraga Municipal Code Title 8, Planning and Zoning is deleted in its entirety and replaced with the following:

Chapter 8.92 – Animal Keeping

Article 1: Small Farm Animals

- 8.92.010 Purpose
- 8.92.020 Definitions
- 8.92.030 Small Farm Animals Permitted
- 8.92.040 Standards and Prohibitions
- 8.92.050 Enclosures
- 8.92.060 Maintenance
- 8.92.070 Slaughtering

8.92.080 Beekeeping

8.92.090 Exceptions

8.92.010 Purpose.

The purpose of this article is to maintain the semi-rural quality of Moraga and promote local food production by allowing small farm animals as accessory to existing permitted residential uses in Residential, Study, Institutional, MOSO and non-MOSO open space zoning districts while protecting the health, safety and general welfare of the community.

8.92.020 Definitions.

In this article, unless the context otherwise requires, the following definitions shall apply:

- A. "Animal Farming" means the raising and keeping of Small Farm Animals.
- B. "Apiary" means the assembly of one or more colonies of honey bees at a single location.
- C. "Honey Bee Colony" means an aggregate of bees consisting principally of workers, but having, when perfect, one queen and drones, including brood, combs, honey and the receptacle inhabited by the bees.
- D. "Nucleus Colony" means a small honey bee colony of a few thousand honey bees with a queen, created from larger colonies and typically kept within a smaller size box.
- E. "Small Farm Animals" means small un-hooved animals, including, but not limited to, chickens, doves, pigeons, quail, game birds, rabbits and honey bees (*Apis mellifera*). Small farm animals do not include:
 - (1) Companion animals, also known as pets, kept primarily for a person's company or protection, including dogs, cats, hamsters, parakeets, and exotic animals.
 - (2) Livestock as defined in Section 8.04.

8.92.030 Small Farm Animals Permitted

The keeping of Small Farm Animals, with the exception of honey bees, is permitted on parcels 6,000 square feet or more in size, based on gross lot area, in the following districts, subject to the standards, prohibitions and regulations, set forth in this Chapter 8.92:

- A. Small Farm Animals may be kept on parcels within the 1-DUA, 2-DUA, 3-DUA, 6-DUA, Study, Institutional, MOSO or non-MOSO open space zoning districts as accessory to an existing permitted single-family residence, duplex, triplex or fourplex, subject to the limitations in number set forth in subsection (b) below.
- B. Excepting bees, the number of Small Farm Animals permitted on a given parcel, based on gross lot area, is:

(1) Parcel 5,999 square feet or less	none
(2) Parcel 6,000 square feet to 10,000 square feet	maximum of 4
(3) Parcel 10,001 square feet to 20,000 square feet	maximum of 6
(4) Parcel 20,001 square feet to 40,000 square feet	maximum of 8
(5) Parcel greater than 40,000 square feet	maximum of 16

8.92.040 Standards and Prohibitions

- A. Small Farm Animals shall be kept for personal enjoyment or home consumption.
- B. Small Farm Animals and products from Small Farm Animals shall not be sold for commercial purposes.
- C. Roosters, waterfowl, peacocks, guinea hens, and any animals which produce undue noise and/or create a nuisance to neighboring residents as defined in section 7.12.070 are prohibited.

8.92.050 Enclosures

- A. Small Farm Animals, with the exception of honey bees, shall be kept within a structure or fenced area at all times to ensure against trespass onto neighboring or public property.
- B. Small Farm Animals shall have access to a coop, cage, or similar structure, which:
 - (1) Provides protection from the elements and predators; and
 - (2) Is located in the rear or side yard; and
 - (3) Meets the minimum front, side and rear setbacks required for the primary residence. Structures to house Small Farm Animals do not qualify for reduced side or rear yard setbacks for accessory buildings or structures.

8.92.060 Maintenance

- A. Enclosures, animal products and manure storage must be maintained to be free from odor, and prevent a breeding place for flies, pests or vermin.
- B. Animal feed shall be stored in a rodent and predator proof container.

8.92.070 Slaughtering

Slaughtering of Small Farm Animals is permitted on any parcel where the keeping of Small Farm Animals is permitted, provided that:

- A. Slaughtering shall take place in the privacy of the property, taking necessary precautions to ensure the privacy of neighbors and shall not be seen from adjoining properties; and
- B. Remains shall be disposed of in accordance with local waste regulations and in a timely manner to prevent deterioration of the remains and odor.

8.92.080 Beekeeping

- A. Beekeeping may occur on parcels within the 1-DUA, 2-DUA, 3-DUA, 6-DUA, Study, Institutional, MOSO or non-MOSO open space zoning districts as accessory to an existing permitted single-family residence, duplex, triplex or fourplex, subject to the standards, requirements and regulations set forth in this Section.
- B. Apiaries shall be registered with the Contra Costa County Agricultural Commissioner and the Town of Moraga Planning Department;
- C. Beekeeping Standards:
 - (1) Number: The number of honey bee colonies permitted on a given parcel, based on gross lot area, is:
 - i. Parcel 5,999 square feet or less none
 - ii. Parcel 6,000 square feet to ½ acre maximum of 4
 - iii. Parcel more than ½ acre but less than 1 acre maximum of 6
 - iv. Parcel 1 acre or larger maximum of 8
 - v. One nucleus colony may be kept for each honey bee colony permitted on a parcel.
 - (2) Location of honey bee colonies:
 - i. Shall be located in the rear or side yard and shall not be located within the front yard, or the exterior side yard setback; and
 - ii. When kept within a series of rectangular bee boxes or similar non-permanent containers less than 6 feet in height, shall be set back a minimum of 5 feet from property lines; and
 - iii. Shall be set back a minimum of 25 feet from public rights-of-way and private streets; and
 - iv. Buildings or structures housing honey bee colonies shall comply with the accessory building and accessory structure setbacks of the applicable zoning district.

- (3) Flyway Barrier: Wherever a honey bee colony is less than 100 feet from a neighboring residence or outdoor living area a flyway barrier is required. The flyway barrier shall be:
- i. A minimum 6 feet high, consisting of a solid wall or fence or dense vegetation, and
 - ii. A minimum of 20 feet long, centered on and perpendicular to the shortest line that could be drawn between the honey bee colony and the neighbor's residence or outdoor living area.
- (4) Water: All properties on which honey bee colonies are kept must have adequate water sources on the property. Adequate sources of water provide both an amount of fresh water necessary for the amount of honey bees or honey bee colonies and a method for the honey bees to be able to gain a good footing to obtain the water. Adequate water sources must be in place prior to honey bees or honey bee colonies being placed on the property to ensure that the bees primarily use the provided water source and do not seek out water sources on neighboring properties prior to the arrival of their own water source.

8.92.090 Exceptions

- A. An application seeking an exception from Sections 8.92.030(b), 8.92.040(c), 8.92.050 or 8.92.080(c) may be filed on a form prescribed by the Town, along with the required fee.
- B. Notification to neighbors shall be provided at least 10 calendar days prior to the decision on the application consistent with Section 8.12.070.
- C. The burden is on the applicant to demonstrate that potential impacts are adequately mitigated.
- D. The Zoning Administrator may deny, approve, approve subject to conditions, or refer the application to the Planning Commission. The Zoning Administrator or Planning Commission may impose reasonable conditions to protect the health, safety and general welfare of the community.
- E. The application may only be approved if the Zoning Administrator or Planning Commission finds that the potential for noise, odor, safety, health and other impacts to neighboring properties are adequately mitigated.
- F. The decision of the Zoning Administrator or Planning Commission may be appealed following the procedures of Chapter 8.12.

Article 2, Dog Fanciers, Livestock and Other Animals

- 8.92.100 Permit as dog fancier
- 8.92.110 Livestock and other animals
- 8.92.120 Livestock and other animal structures

8.92.100 - Permit as dog fancier

- A. A permit to operate as a dog fancier (the keeping of three or more dogs over six months of age as defined in Section §8.04.020) may be issued only after the approval of an application for a conditional use permit and only for land included in the following land use districts:
 - (1) Single-family residential, 1-DUA;
 - (2) Single-family residential, 2-DUA;
 - (3) Any other residential land use district where the applicant's lot is at least twenty thousand (20,000) square feet in area and where the maximum number of dogs permitted over six months of age does not exceed four;
 - (4) MOSO and non-MOSO open space;
- B. In single-family residential districts, the planning commission shall fix the maximum number of dogs permitted to be kept as a condition of issuance of the conditional use permit.
- C. All dogs maintained by a dog fancier shall be confined on the premises or trained and exercised under the owner's control and shall be enclosed in a building during the hours of darkness.

8.92.110 - Livestock and other animals

- A. Livestock may be kept on property included within MOSO and non-MOSO open space land use districts subject to the following requirements:
 - (1) The parcel of land on which the livestock are kept is not less than forty thousand (40,000) square feet in single fee ownership;
 - (2) No more than one head of livestock is maintained per twenty thousand (20,000) square feet of area.
- B. In the residential land use districts, a conditional use permit is required to keep livestock.
- C. Other animals for which provision is not otherwise made in this title, may be kept on land within MOSO or non-MOSO open space or single-family residential land use district, subject to the requirement that the parcel of land on which the other animals are kept is not less than forty thousand (40,000) square feet in area and a Conditional Use Permit is obtained.
- D. The zoning administrator may, after notice to the planning commission, issue the Conditional Use Permit for the keeping of livestock and other animals required by subsections A, B and C of this section, subject to review by the planning commission.
- E. Because of the size of lots, side yards and close development, the keeping of livestock and other animals in highly developed areas is seldom appropriate. A Conditional Use Permit for the keeping of livestock, and other animals may be

issued only where the applicant demonstrates that the lot involved in the application and lots in the surrounding area are of such a size and configuration that the keeping of livestock, and animals is compatible and consistent with the surrounding development and that the area is comparable to other areas within the town where a land use permit is not required for the keeping of livestock and animals.

8.92.120 – Livestock and other animal structures

Notwithstanding the setback, side yard and rear yard provisions in the residential land use districts, the following provisions apply to the location of animal structures in all such districts, provided such structures are permitted:

- A. Barns, stables, and similar accessory buildings and structures used to shelter animals or livestock shall be located in the rear yard of the principal structure.
- B. Fenced pasture, paddocks or other enclosures for livestock or other animals shall not be located nearer than ten (10) feet to a property line.
- C. Shelters for livestock, and other animals not otherwise addressed in this title shall be set back not less than sixty (60) feet from the front property line and from any street line and shall be located not less than two hundred (200) feet from any point on an adjoining parcel of land at which point the exterior wall of a dwelling unit either exists or could legally be constructed.
- D. A variance permit to modify subsections A through C of this section may be granted subject to the requirements for a variance set forth in this title.

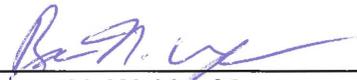
SECTION 4: Effective Date. This ordinance becomes effective thirty (30) days after its final passage and adoption.

SECTION 5: This Ordinance shall be published and posted according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

SECTION 6: Severability. If any provision of the 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 which can be given effect without the invalid 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 this Ordinance irrespective of the invalidity of any particular portion thereof.

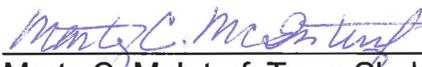
The foregoing ordinance was introduced at a meeting of the Town Council of the Town of Moraga, California, held on November 18, 2015 and was passed and adopted at a meeting of the Town Council held on December 9, 2015 by the following vote.

AYES: Mayor Wykle, Councilmembers Arth, Onoda and Trotter
NOES: None
ABSTAIN: Vice Mayor Metcalf
ABSENT: None



Roger N. Wykle, Mayor

ATTEST:



Marty C. McInturf, Town Clerk