Town of Moraga	Agenda Item
Ordinances, Resolutions, Requests for Action	4. A.

Meeting Date: November 17, 2021

TOWN OF MORAGA **STAFF REPORT**

To: **Honorable Mayor and Councilmembers**

From: **Afshan Hamid, Planning Director**
Barry Miller, Barry Miller Consultant

Subject: Receive and Discuss a Report on Potential Tools for Creating Affordable Housing as Part of Moraga's Comprehensive Advanced Planning Initiative

Request

Receive and discuss an informational report on potential tools for creating affordable housing in Moraga, meeting State and local housing goals. This report is being provided as part of the State-mandated 2023-2031 Housing Element Update, which is underway. The format for the meeting will include a presentation by staff, consultants, and two panelists, including an affordable housing developer (Eden Housing) and advocacy organization (East Bay Housing Organizations).

Background

As required by State law, the Town of Moraga is in the process of updating its Housing Element to cover the 2023-2031 planning period. A joint Town Council/Planning Commission study session on October 6, 2021 provided an overview of Moraga's Comprehensive Advanced Planning Initiative: 6th Cycle Housing Element and Rezone and General Plan Update ("the Project'), including the context for housing in Moraga, the required contents of the Housing Element, a description of housing needs and potential sites, and the timeline and process for community engagement. On October 27, 2021 the Town Council received an update from attorneys Burke, Williams & Sorensen, LLP regarding new State housing laws and the requirements for Affirmatively Furthering Fair Housing (AFFH) Town staff and its consultants have also convened a series of Zoom community workshops introducing the Project to Moraga residents. These occurred on October 20 and 28, and Saturday, November 13, 2021 at 10:00 a.m.

One objective of the Housing Element is to support the production of a variety of housing types for a diverse range of income groups. The Town is required to plan for its "fair share" of the region's housing needs over the eight-year planning period. As described at previous meetings, the "fair share" assignment is made by the Association of Bay Area

Governments (ABAG) through a process called the Regional Housing Needs Allocation (RHNA). The RHNA for Moraga for the 2023-2031 period is 1,118 housing units, including 501 units for low and very low income households. The Town must demonstrate that it has the capacity to accommodate these households on sites zoned at densities of 20 units per acre or more.

In addition to designating sites for the production of affordable housing, the Town must also develop policies, programs and implementable actions that support the private and non-profit sectors in their efforts to actually build housing. For communities such as Moraga, without a track record of affordable housing production, this will require new programs and tools. The purpose of this staff report and the study session on November 17 is to provide an overview of potential housing implementation tools and receive feedback about which tools might be the best fit for Moraga.

An important part of this discussion is understanding what is meant by "affordable housing." Both the state and federal governments define affordable housing as housing that requires not more than 30 percent of gross household income, including rent or mortgage payments, utilities, and insurance. Most state and federal housing programs apply the 30 percent threshold to determine eligibility for housing assistance, including the maximum rents or prices that may be charged to residents living in affordable units. In California, the statutory limits are based on the areawide median income (AMI) in each County. The earning thresholds for the various affordability levels follows:

Extremely low income households	< 30 percent of AMI
Very low income households	30 to 50 percent of AMI
Low income households	50 to 80 percent of AMI
Moderate income households	80 to 120 percent of AMI

The income limits associated with each category are scaled based on the number of persons per household. In Contra Costa County, a household of four people earning between $68,500 and $109,600 is considered "low income." A household of four earning less than $68,500 is considered "very low income." The corresponding monthly affordable housing costs for these households would be $2,740 (for a low income household of four) and $1,712 (for a very low income household of four).

Most rental housing in Moraga exceeds affordability income thresholds and virtually all owner-occupied housing in Moraga would require monthly payments that far exceed the affordability income thresholds.

<u>Discussion</u>

Relationship to "Affirmatively Furthering Fair Housing" Mandate

In 2017, the State adopted AB 686 which mandates that jurisdictions must "affirmatively further fair housing" (AFFH) in their programs and activities relating to housing and development. As part of its Housing Element, the Town must examine its policies, plans, programs, rules, practices, and standards and make proactive changes to promote a more inclusive community.

Practically speaking, the Town must determine if accommodating a wide variety of housing types in its planning and zoning regulations will achieve the goals. In addition to zoning land for higher-density housing and mixed-use development, the Town must ensure that the standards that apply in these areas are realistic and support the densities that are allowed. The Housing Element will include a comprehensive analysis of potential zoning constraints, such as minimum dwelling unit sizes, height limits, parking requirements, and allowances for particular housing types, including supportive and transitional housing.

AFFH also requires that multi-family housing opportunities are not concentrated in a single location but are instead distributed in a way that reduces segregation. The California Department of Housing and Community Development (HCD) requires cities and towns to evaluate and address patterns of *affluence* as well as patterns of poverty within each community. Additionally, the Town must evaluate whether its development requirements place an undue burden on multi-family housing that either purposefully or inadvertently make it impossible to build affordable housing.

Zoning Tools

Zoning for Multi-Family and Mixed-Use Housing

The most basic tool for accommodating affordable housing is to zone land for multi-family housing. This typically requires identifying multi-family housing as a "permitted" use within a zoning district (rather than as a conditional use or prohibited use), and then allowing densities and heights that accommodate multi-family construction. Density ranges for multi-family housing vary, but affordability is easier to achieve at densities over 20 units per acre. In Central Contra Costa County, most affordable housing projects occur at densities of 30 units per acre or more, with construction that is three stories or higher.

Multi-family projects are generally characterized as "market rate" or "affordable." Market rate projects are built by private, for-profit developers, typically with no restrictions on the incomes of the occupants or rents/sales prices being charged. Affordable housing is typically (but not always) built by non-profit developers, with restrictions on the incomes of occupants and limits on rents and sales prices. Some projects are "mixed income," meaning they include a combination of market-rate units and affordable units. Most multi-family projects include a mix of unit types, ranging from studios to three-bedroom units.

Zoning does not typically differentiate between "affordable" housing and "market rate" housing, although affordable housing may be subject to modified parking standards or other standards that are more lenient. State law prohibits cities from adopting special standards or regulations that make affordable housing more difficult or expensive to build than market-rate housing.

Some market-rate multi-family projects may be considered "affordable by design." This means that they are privately built and rented/sold at market rates, but at costs that meet affordability guidelines for lower and moderate-income households. For example, accessory dwelling units (ADUs) are often affordable to lower income households simply by virtue of their small size, low construction cost, and relatively low rents. Some of the older apartment complexes in Moraga also may meet this definition.

<u>Allowances for Multi-Family Housing in Commercial Districts</u>

Outside of the Moraga Center Specific Plan area, most non-residential zoning districts in Moraga do not list multi-family housing as a permitted or conditionally permitted use. The Commercial zones (such as Limited Commercial, Community Commercial, and Suburban Office) provide discretion to allow "uses consistent with the purpose of the district and compatible with surrounding uses" but do not reference housing as an allowable use. Thus, the decision to allow housing in these areas is subjective and not guaranteed. Expressly listing multi-family housing as permitted uses in these zones, subject to measurable design standards, would create additional multi-family development opportunities and streamline approval.

<u>Minimum Densities</u>

To encourage the efficient use of land, some communities prohibit residential development below specified minimum densities, such as 20 or 25 units per acre, on properties zoned for multi-family or mixed-use development. This could be an appropriate approach in communities with a limited supply of buildable sites. In Moraga's case, this could entail prohibiting single family homes on land zoned for multi-family housing, or requiring any housing built on former commercial sites to be at least 20 units per acre. This effectively shifts what is now a density "ceiling" (or maximum) to a density "floor" (or minimum). A maximum would still be retained, but it would be higher—for example, 30 or 35 units per acre on key sites in order to keep a buffer.

Some communities have replaced density limits with floor area ratios (FAR) maximums to regulate the mass of a building, or height and setback limits that define a building envelope. This creates an incentive for smaller, more affordable units, since there is no limit on the number of units that may fit inside the envelope.

<u>State Density Bonuses</u>

Density bonuses allow developers to build additional units if they include a certain percentage of affordable units in their projects. By increasing the number of units allowed in a given location, developers can increase their revenue and use the proceeds to offset the lower sales prices or rents that are charged for the affordable units. Public subsidies are not required, making this an attractive option for cities with limited resources. Density bonuses are commonly used in areas where the jurisdiction wants to encourage higher density development in particular locations, for instance, near the downtown or along major commercial corridors.

Cities and towns are required by State law to make density bonuses available to qualifying projects through the State Density Bonus program. Effective January 2021, developers who include affordable units in their projects are eligible for increases of up to 50 percent above the number of units allowed by zoning. For projects that are 100 percent affordable, an 80 percent increase in the number of units is allowed. Projects using density bonuses are also eligible for other incentives and concessions, such as increased height, reduced setbacks, and lower parking requirements. The developer must demonstrate that these incentives are needed to make the project pencil out.

Through the State Density Bonus program, the amount of the density bonus allowed for any given project is based on a sliding scale that considers the number of affordable units and the level of affordability. For example, a project in which 15 percent of the units are affordable to "very low income" households is eligible for a 50 percent density bonus. If those units were instead affordable to "low" income households, the project would be eligible for a 27.5 percent bonus. If the units were reserved for "moderate" income households, the project would only be eligible for a 10 percent bonus. Bonuses are also available for senior housing, college student housing, and housing for disabled vets, foster youth, and formerly homeless residents, and for market-rate projects that donate land to a city/town for low-income housing.

Local Density Bonuses

A number of cities and towns have developed local density bonus programs that may be used in lieu of the State program or in addition to the State program. These programs are often adopted as part of a specific plan. Most local density bonus programs allow for an automatic increase in allowable building height (e.g., an additional story) for projects that include a certain percentage of affordable units. These programs may be simpler than the State density bonus program, as they allow "by right" approval of projects meeting objective design standards and do not involve negotiating specific concessions.

Affordable Housing Incentive Zones (or Overlay Zones)

A number of cities in the Bay Area (for example, Burlingame, Menlo Park, and Oakley) have adopted Housing Overlay Incentive Zones. These zones are added layers on top of existing zoning ordinances that provide incentives for developers to build affordable housing in specific parts of the city. Some cities, such as Orinda, have adopted senior housing overlay zones with specific incentives for senior housing. Typical incentives in overlay zones include increased density bonuses (beyond State limits), increased heights, lower parking requirements, streamlined permitting and approval processes, fee waivers, and "by right" allowances for affordable housing where it would otherwise require a use permit. A key benefit of Housing Overlay Zones is that they offer developers flexibility without imposing significant costs on the jurisdiction.

Flexible/ Relaxed Parking Standards

Parking is expensive to construct. A typical podium parking space costs $60,000 - $75,000. Reduced parking requirements are a strategy to reduce the cost of a project.

Currently the Moraga Municipal Code (MMC) parking standards do not differentiate parking for a multi-family unit versus a single-family home. The MMC requires two parking spaces for each dwelling unit regardless of the type of unit. Additionally for every two dwelling units, one guest parking space is also required. Typically, in most zoning codes, only one parking space would be required for a studio or one bedroom apartment. In addition to reevaluating parking requirements for smaller units, the Town could consider reducing parking requirements for projects meeting specific criteria, such as affordability, proximity to bus or shuttle service, availability of off-site parking nearby, or availability of e-bikes, shared cars, or other modes of travel that reduce car ownership. State density bonus laws already limit the number of parking spaces that a city or town may require for affordable housing units. The Town could offer further reductions to these standards for senior housing or mixed-use projects where a large number of empty retail or office parking spaces are available during the overnight hours or off-peak hours (e.g. "shared parking"). Housing costs can also be reduced by "unbundling" parking from housing units, in other words, by giving the renter or homeowner the option of paying for a parking space rather than including it with the dwelling unit.

Ultimately it is up to the developer to assess the market and determine whether units with reduced parking will be competitive for renters. However, providing the option for developers to reduce their costs in exchange for affordable housing units is a proven approach to realizing affordability.

Permitting and Processing Tools

Fee Reductions or Waivers

Some jurisdictions offer reduced fees for affordable units, including reduced building permit fees, reduced (or waived) planning fees, and reduced impact fees. This can lower development costs and make an affordable housing project more feasible. However, this is not a common approach for small communities such as Moraga as it affects the Town's ability to recover the cost of processing an application and offsetting the impacts of new residents on local services. Fee reductions should be carefully calibrated to balance costs and benefits.

Streamlined Development Review

Lengthy permit processing can add substantial costs to development, constraining production of both market-rate and affordable housing. In recent years, the State of California has adopted legislation such as Senate Bill 35 (SB 35) to expedite the approval process. This includes adoption of local objective design and development standards to allow by-right development, checklists for applicants to reduce the time it takes to complete an application, and permit management systems that support streamlined approvals. Expedited permitting for projects with affordable housing can reduce land holding times before development begins and provide greater certainty to the development process.

Inclusionary Housing and Housing Trust Funds

Inclusionary Housing

Inclusionary housing is a locally adopted policy that requires a specified share of new market-rate housing development to be affordable to low- or moderate- income households. The percentage of affordable units set aside as affordable typically ranges from 10 to 20 percent, though these figures may vary depending on the affordability level of the units and the type of housing. The affordable units are commonly known as "Below Market Rate" or BMR units and are integrated into the project in a way that makes them difficult to distinguish from the market rate units. Occupancy of the BMR units is limited to qualifying lower or moderate-income households.

Many cities with inclusionary housing requirements offer developers the option of paying an "in lieu fee" instead of building the units on-site. The fee is typically deposited into a Housing Trust Fund, where it accrues with fees from other projects. As the Housing Trust

Fund gets larger, the proceeds may be used to assist non-profit developers seeking to build 100 percent affordable projects. These funds may also be used to provide other forms of housing assistance.

Approximately 170 cities in California have adopted inclusionary housing ordinances. Lafayette has an inclusionary ordinance that applies to its Downtown area and Danville requires 10 to 15 percent of all units in new developments to be “BMR,” depending on the total number of units in the project and other factors. Cities that have such ordinances typically use them in conjunction with their density bonus ordinances.

The following issues should be considered when developing an inclusionary ordinance:

- Percentage of units required to be affordable based on affordability level
- Length of affordability terms
- In-lieu payment option
- Qualifying projects

The above factors shape the degree to which an inclusionary ordinance acts as an incentive for affordable housing production. Setting the BMR percentage too high may have the unintended consequence of reducing profits and overall construction, defeating the purpose of the ordinance.

Housing Trust Funds

As noted in the previous section of this report, some local communities have created housing trust funds as a way to support affordable housing. These are dedicated funds that are held in trust by local governments or other agencies. Revenues are received from dedicated sources, such as inclusionary housing fees paid by new market-rate development, affordable housing impact fees, or condominium conversion fees. Funds may be used to address priority needs or fill gaps not covered by other state or federal housing programs. Other potential funding sources might include general fund set-asides, State grants, charitable contribution funds, or other one-time funds.

Trust funds can provide a variety of functions depending on the capacity of the agency, restrictions on the source funds, and the amount of money in the fund. Typical applications include leveraging other funds to close gaps needed to make projects work, providing matching funds to secure other sources (such as housing tax credits) and reducing the cost of borrowing (e.g., providing a source of low-interest loans).

Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs)

Accessory dwelling units (ADUs), also referred to as second units or "in-law" units, have been promoted by the State of California as a viable way to increase the supply of affordable units while retaining the low-density single-family context of suburban communities. In 2017, the State adopted several pieces of legislation designed to further promote the production of ADUs. These included ministerial (“by right”) review requirements and elimination of parking requirements for ADUs near transit. Additional legislative changes were approved by the State in 2019, leading to further revisions to most local ADU ordinances.

The Town of Moraga allows ADUs that are fully contained within the envelope of an existing building or accessory structure in any single-family district or Planned Development district, provided the unit has independent access and complies with fire safety standards. The Town has also adopted standards for attached and detached ADUs that add floor space, including a requirement that the unit is between 150 and 800 square feet, no more than 19 feet in height, and is no more than 50 percent of the pre-existing floor area of the primary unit. A number of objective design standards also apply.

Some communities have sought to increase their affordable housing supply by making it easier and less expensive to build ADUs, or even by incentivizing deed restrictions that limit the rent of ADUs so they are kept affordable to low and very low income households. In the former case, costs can be reduced by a city or town offering "pre-approved" floor plans for ADUs to homeowners, or by waiving fees and other potential impediments to ADU construction. In the latter case, non-profit developers such as Habitat for Humanity have partnered with jurisdictions and homeowners to build and subsidize affordable ADUs in residential backyards.

Low Income Housing Tax Credits

Low-Income Housing Tax Credits have been a critical part of expanding the supply of affordable housing in the United States since 1986. Between 1987 and 2015, roughly 3 million affordable units were created nationwide using this program. Tax credits give private investors a federal income tax credit as an incentive to make equity investments in affordable rental housing. The equity is used to build new projects or to renovate and refinance existing projects. These investments reduce the need for costlier methods of financing and allow for lower rents and greater affordability.

Tax credit deals are often complex, involving private investors and partners spanning all levels of government as well as real estate finance specialists and legal and tax experts. Financing deals may be equally complicated, particularly when the credit is layered with other funding sources that may have different income and reporting requirements. Despite these limitations, tax credit funding has been successfully used to produce affordable housing throughout Contra Costa County, including senior housing projects.

Other Housing Types

<u>Employee Housing</u>
In some communities, major employers are building housing for their employees on land they own or acquire. These projects create dedicated employee housing near worksites and can be a powerful employee recruitment and retention tool. In Moraga, there may be opportunities for St. Mary's College to develop housing for faculty, staff, and students on campus or at their office site on Rheem Boulevard and Moraga Road.

There are a number of benefits to employee housing, including the potential for reduced traffic congestion and greenhouse gas emissions as local workers can find housing nearby.

Acquisition and Rehabilitation Projects
New construction is only one way to create affordable housing. A more cost-effective approach can be for non-profit developers to acquire aging multi-family housing in the community, rehabilitate the units using special financing tools, and then set aside the units as permanently affordable. Under such a program, cities with housing divisions and staff may assist the developer in acquiring the complex, working with existing tenants on temporary relocation and first right of return, and managing or monitoring the project as long-term affordable housing. A number of State funding sources are available to facilitate such conversions.

Unfortunately, these "acquisition and rehabilitation" projects do not count toward the city's Regional Housing Needs Allocation (RHNA) unless the units are vacant and uninhabitable when they are rehabilitated. However, they do provide a resource for creating affordable housing in a way that does not change neighborhood context and helps long-time tenants who may face displacement due to rising rents.

Fiscal Impact

The November 17 item is a study session and does not have a direct fiscal impact. The programs to be discussed would have varying fiscal impacts and require varying levels of financial resources from the Town. These may be discussed and evaluated on a case-by-case basis as part of development of the Housing Element or implementation of individual programs.

CEQA

This discussion item is not considered a "project" under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21000, et seq. and the CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et. seq.) and will not cause a direct, or reasonably foreseeable indirect, physical change in the environment. As discussed in prior study sessions, the Town will conduct environmental review for the Housing Element and related rezoning and General Plan Update process, as required by CEQA.

Recommendation

Staff recommends that the Town Council and Planning Commission members provide feedback on the potential implementation tools to help shape new Housing Element Action programs as the 2023-2031 Element is drafted.

Report reviewed by: **Cynthia Battenberg, Town Manager**