



Inclusionary Zoning: Policy Choices

Moraga Comprehensive Advanced Planning Initiative
Town Council Discussion and Direction
August 24, 2022



Context

The 2023-2031 Housing Element includes a policy recommendation to adopt an Inclusionary Zoning Ordinance

Adoption of an Inclusionary ordinance is being undertaken as part of the Comprehensive Advance Planning Initiative

Tonight we are asking for direction from the Council

Assuming direction is provided, staff plans to bring a draft policy to the Planning Commission and Town Council for adoption prior to the end of the calendar year

Inclusionary Zoning

- Locally adopted ordinance (not a State mandate)
- Requires a percentage of units in future residential developments to be rented or sold at “below market rates” (BMR)
- Profit loss to developer is mitigated through density bonus and waiver of certain development standards
- Effective tool for affirmatively furthering fair housing and achieving some of the lower-income housing assignment



90% of Contra Costa's jurisdictions either have I.Z. or are evaluating it now

Jurisdiction	Has Inclusionary Zoning	Recommended in Draft Housing Element	No Ordinance or plan to develop
Contra Costa Co	X		
Antioch		X	
Brentwood	X		
Clayton	X		
Concord	X		
Danville	X		
El Cerrito	X		
Hercules	X		
Lafayette	X		
Martinez			X

Jurisdiction	Has Inclusionary Zoning	Recommended in Draft Housing Element	No Ordinance or plan to develop
Moraga		X	
Oakley			X
Orinda			X
Pinole		X	
Pittsburg		X	
Pleasant Hill		X	
Richmond		X	
San Pablo			X
San Ramon		X	
Walnut Creek		X	

Inclusionary Zoning Economics

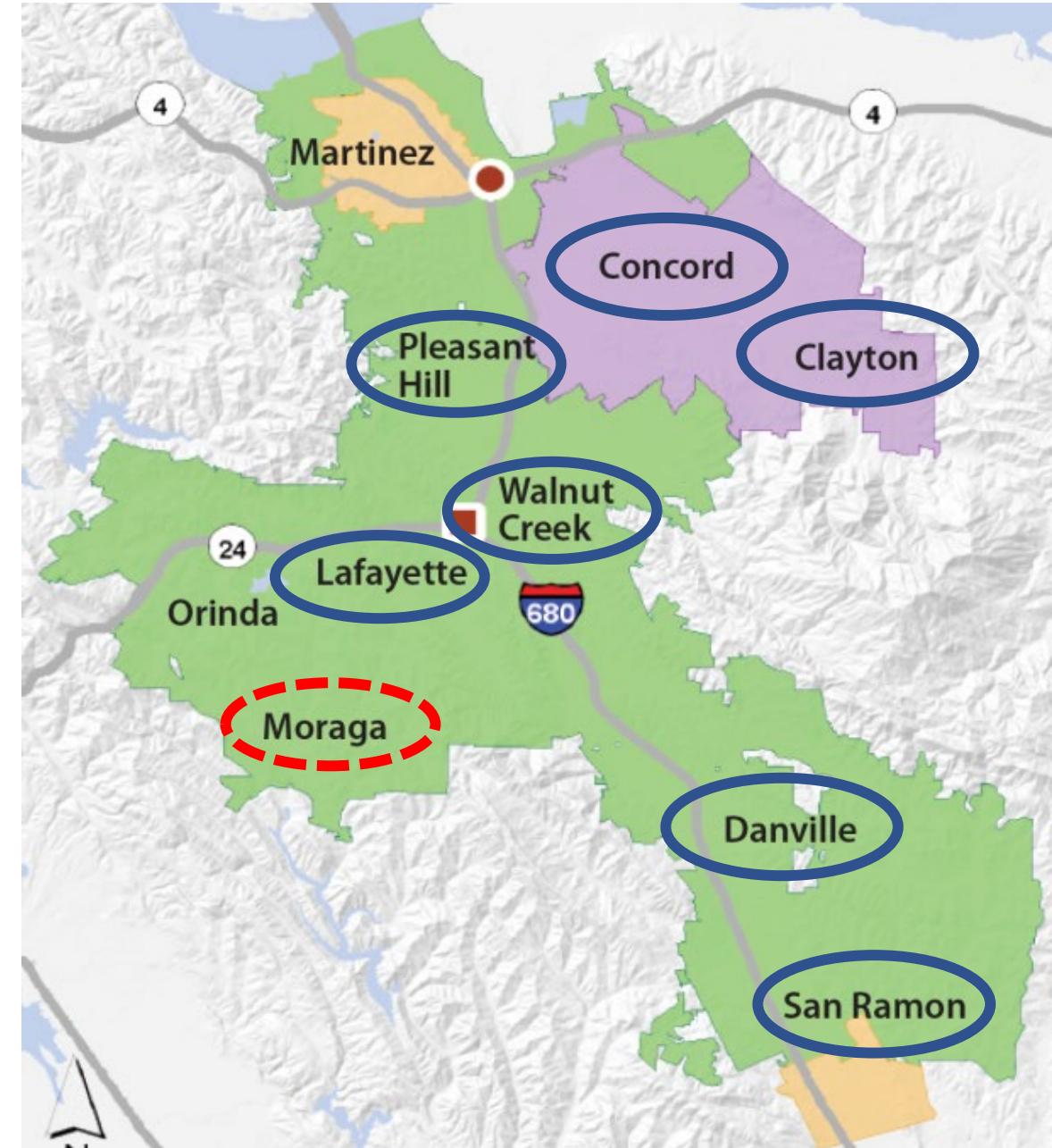
- Inclusionary ordinance affects project value
- If I.Z. percentage is too high, projects will not be feasible and will not proceed
- Incentives can offset the effect of inclusionary requirements by impacting development costs, project value, or both
- Upzoning can also offset the effect of inclusionary requirements
- Not all developers are seeking additional density, but they can still benefit from waivers from development standards such as height limit, parking, setbacks



Components of an Inclusionary Zoning Ordinance

1. Purpose
2. Definitions
3. Basic Provisions/ Scope
 - a) Affordability Requirements and Allocation by Income
 - b) Exemptions and Fractional Units
 - c) Design of BMR units and Timing
4. Alternative Means of Compliance
5. Operations and Reporting (Agreements and Length of Affordability)
6. Incentives

Learning from our neighbors



Policy Consideration 1: What percent of units should be affordable?

- Most ordinances use 10-15%
- Some ordinances provide more “mix and match” options than others
 - Some communities specify a fixed percentage for all projects
 - Other communities allow a lower percentage for a higher depth of affordability
- **For-sale** BMR units are generally targeted to moderate and low income
- **For-rent** units are generally targeted for low- and very-low income
- Some communities vary percentages based on unit type (SF vs MF)
- Providing variation across income groups helps meet RHNAs

Policy Consideration 1: What percent of units should be affordable?

Community	Affordability Requirement
Clayton	10% (5% low plus 5% very low), regardless of tenure
Concord	For sale: 10% moderate or 6% low For rent: 10% low or 6% very low
Danville	For sale: 10% moderate For rent: 10% in small projects; 15% in large projects (all moderate)
Lafayette	For sale: 15% (9% moderate plus 6% low) For rent: 15% (9% low plus 6% very low)
Pleasant Hill	5% very low OR 10% low OR 20% deed-restricted ADUs OR 25% senior
San Ramon	For sale: 10% (income distribution different for single family vs multi) For rent: 15% (7.5% low plus 7.5% very low)
Walnut Creek	For sale: 10% moderate (or 7% low or 6% very low) For rent: 10% low or 6% very low

Some communities allow for-sale projects to meet the BMR requirement with rental units, including ADUs



Single family home builders have the option of meeting the BMR requirement by including:

- ADUs in 20% of the homes (Pleasant Hill)
- ADUs in 25% of the homes (Danville)

Pleasant Hill requires the ADUs to be deed restricted to lower income

Danville does not require deed restrictions but presumes ADUs are affordable “by design” to moderate (and some lower) income households

- *Not all ADUs are used as rentals, but they are still an affordable housing resource in higher income neighborhoods*
- *The ADUs also add value to the homes and are a marketing amenity*
- *Recent trends (remote work, multi-generational families) make ADUs a sought-after product in new housing*

Policy Consideration 1: Percentage Requirement Staff Recommendation

Staff Recommends:

- 10% affordability
- For Sale requirement of 10% moderate with a methodology for calculating the equivalent percentage of low-income units
- For Rent requirement of 10% low with a methodology for calculating the equivalent percentage of very low-income units
- Review of this requirement in 2-3 years to determine its effectiveness in promoting development of affordable units and housing in general

Policy Consideration 2: Exemptions and “Fractional units”

- Each community handles this differently
- Fractional units are often converted to fees
- Fees require management and administration
- Fees are based on the gap between an “affordable” unit and a “market rate” unit (not the cost of building an affordable unit)
- Fees are used for housing programs, including local assistance for projects that are 100% affordable.
 - *They could be used for affordable housing program management such as tracking of BMR units and a fair rental housing program, but the irregular funding stream could pose challenges*



Policy Consideration 2: Exemptions and “Fractional units”

Community	Exemptions	Fractional Units
Clayton	< 10 units	Converted to fee
Concord	< 5 units	5-9 units converted to fee < 0.5, converted to fee; <0.5, rounded up to 1
Danville	< 8 units	< 0.75 or more, rounded up to 1. No fee if less than 0.75*
Lafayette	< 5 units	0.5 or more, rounded up to 1. No fee if less than 0.5*
Pleasant Hill	< 5 units	5-9 units, converted to fee Converted to fee in projects with 10+ units
San Ramon	< 2 units	2-9 units, converted to fee 0.5 or more, rounded up to 1. No fee if less than 0.5
Walnut Creek	None	0.7 or greater, rounded up to 1 Less than 0.7, converted to fee

* Fee is authorized by Ordinance but not collected at this time

Policy Consideration 2: Exemptions and “Fractional units”

- Most (but not all) jurisdictions have exemptions for small projects
- Applying percentage requirements to most projects will not result in a round number.
 - Example: If inclusionary requirement is 10% and project has 15 units, then the project must provide 1.5 BMR units
 - Round up? Round down? Convert the 0.5 unit into a fee?
- Jurisdictions treat fractional units differently

Policy Consideration 2: Exemptions/Fractional Units

Staff Recommendation

- Projects of fewer than 5 units are exempt
- Projects with 5 – 9 units pay a fractional in lieu fee
- Projects with more than 10 units pay in lieu fee for fractional units

Policy Consideration 3: Alternate Means of Compliance

- State law (AB 1505) requires the Town to provide developers with an alternative to building the BMR units on-site
- In-lieu fee is most common option, but not mandatory (and may not be ideal for a small town like Moraga)
- Off-site alternatives can intentionally be made less attractive in order to incentivize on-site production
- Most ordinances provide a “menu” of options
 - Build units off-site
 - Donate land
 - Acquire and rehab existing units

Policy Consideration 3: Alternate Means of Compliance

Community	Alternate Means of Compliance*
Clayton	Off-site, but at 1.5X the requirement
Concord	Off-site, but at 2X the requirement
Danville	In-lieu fee for single family; fee not allowed for multi-family
Lafayette	Off-site, but at 2X the requirement
Pleasant Hill	Acquisition and rehab of existing housing, but at 4X the requirement
San Ramon	Off-site, but only if reviewing authority finds greater or equivalent benefit
Walnut Creek	Council must find that on-site is infeasible Can provide moderate units instead of low-income, but at a proportionally higher percentage

** Not all alternate means of compliance are listed in this table*

Policy Consideration 3: Alt Means of Compliance

Staff Recommendation

- Developer may acquire existing multifamily units located elsewhere within the city and rehabilitate those units, but at double the number required on-site
- Construct new affordable units off-site, but at 15% of the total project instead of 10%
- Donate land to an affordable housing developer
- All off-site units must come online concurrently with the related residential project

Policy Consideration 4: Design and Timing

- Most ordinances provide basic design guidance so that BMR units blend seamlessly with project
- Guidelines address:
 - Size of BMR unit
 - Number of bedrooms vs average for entire project
 - Access to common amenities
 - Interior finishes
 - Housing type for BMR unit
- BMR units must come on-line concurrently with market-rate units



Policy Consideration 4: Design and Timing

Community	Distribution in the Project	Dwelling Type	# of bedrooms	Reduced Interior Amenities
Clayton	Disperse	Same	Same	Yes
Concord	Disperse	Same	Same	Yes
Danville	May cluster	May be different	May be different	Yes
Lafayette	Disperse	Same	Same	Yes
Pleasant Hill	Disperse	Same	Same	Yes
San Ramon	Disperse	Same	Same	Yes
Walnut Creek	Disperse	N/A (exterior design must be same)	Not specified	Yes

Policy Consideration 4: Design and Timing

Staff Recommendation

- Units should have same exterior design features
- Units should be dispersed
- Lesser interior finishes are OK
- Access to common amenities
- Comparable # of bedrooms (exception for ADUs)
- BMR units can be up to 15% smaller (square footage)
- All off-site units must come online concurrently with the related residential project

Policy Consideration 5: Length of Affordability

- Six of the seven communities use 55-year affordability terms for rental units
- Five of the seven communities use 45 to 55 years for ownership units
- Projects using State density bonuses are subject to additional limitations on length of affordability

Policy Consideration 5: Length of Affordability

Staff Recommendation

- 55 years for rental units
- 45 years for owner-occupied units
- No deed restrictions on ADUs

Policy Consideration 6: Jurisdiction-wide vs Focused Area

- All Contra Costa County cities/towns with IZ (except Lafayette) apply it to the entire jurisdiction
 - Lafayette's approach is a legacy of its redevelopment agency

Policy Consideration 6: Townwide v Focused Area Staff Recommendation

- Ordinance should apply Townwide to comply with AFFH mandate
 - Counting ADUs as low/moderate-income units facilitates the development of affordable units Townwide.

Policy Consideration 7: Incentives

- Most I.Z. ordinances allow for development incentives to offset profit loss for BMR units
- Incentives are typically waivers of development standards (setbacks, parking, density etc.), and are granted on a case-by-case basis
- Incentives work in tandem with State Density Bonus Laws (SDBL)
- With approval of AB 2345 (2020), the SDBL incentives are much more generous and supplant the need for local incentives
- SDBL is voluntary, while IZ is mandatory

State Density Bonus Guides Incentives

- State law requires that projects with affordable units are eligible for “bonuses” (the right to build additional units)
- Amount of the bonus depends on the number of affordable units and level of affordability
- Developers also may request concessions (relaxed standards) to make their projects more viable
 - 10% mod, 10% low, or 5% very low = 1 concession
 - 20% mod or 17% low or 10% very low = 2 concessions
- Concessions could include reduced setback, increased height, etc.
- Additional waivers may be requested if needed to make the project viable

State Density Bonuses for selected project types

Project Type	Density Bonus
100% Affordable	80%
Senior Housing	20%
85% Market Rate 15% Very Low	50%
85% Market Rate 15% Low	27.5%
90% Market Rate 10% Low	20%
85% Market Rate for sale 15% Moderate for sale	10%

Density Bonus Chart

DENSITY BONUS CHART*

AFFORDABLE UNIT PERCENTAGE**	VERY LOW INCOME DENSITY BONUS	LOW INCOME DENSITY BONUS	Moderate Income Density Bonus***	LAND DONATION DENSITY BONUS	SENIOR****	FOSTER YOUTH/ DISABLED VETS/ HOMELESS	COLLEGE STUDENTS
5%	20%	-	-	-	20%	-	-
6%	22.5%	-	-	-	20%	-	-
7%	25%	-	-	-	20%	-	-
8%	27.5%	-	-	-	20%	-	-
9%	30%			-	20%	-	-
10%	32.5%	20%	5%	15%	20%	20%	-
11%	35%	21.5%	6%	16%	20%	20%	-
12%	38.75%	23%	7%	17%	20%	20%	-
13%	42.5%	24.5%	8%	18%	20%	20%	-
14%	46.25%	26%	9%	19%	20%	20%	-
15%	50%	27.5%	10%	20%	20%	20%	-
16%	50%	29%	11%	21%	20%	20%	-
17%	50%	30.5%	12%	22%	20%	20%	-
18%	50%	32%	13%	23%	20%	20%	-
19%	50%	33.5%	14%	24%	20%	20%	-
20%	50%	35%	15%	25%	20%	20%	35%
21%	50%	38.75%	16%	26%	20%	20%	35%
22%	50%	42.5%	17%	27%	20%	20%	35%
23%	50%	46.25%	18%	28%	20%	20%	35%
24%	50%	50%	19%	29%	20%	20%	35%
25%	50%	50%	20%	30%	20%	20%	35%
26%	50%	50%	21%	31%	20%	20%	35%
27%	50%	50%	22%	32%	20%	20%	35%
28%	50%	50%	23%	33%	20%	20%	35%
29%	50%	50%	24%	34%	20%	20%	35%
30%	50%	50%	25%	35%	20%	20%	35%
31%	50%	50%	26%	35%	20%	20%	35%
32%	50%	50%	27%	35%	20%	20%	35%
33%	50%	50%	28%	35%	20%	20%	35%
34%	50%	50%	29%	35%	20%	20%	35%

Density Bonuses: *How does it work with inclusionary zoning?*

EXAMPLE 1:
RENTAL APARTMENT BUILDING SUBJECT
TO 10% LOW-INCOME INCLUSIONARY
REQUIREMENT

- Developer owns 5-acre site
- Zoning allows 24 DUA
- Developer proposes 120 units
- 12 must be affordable to lower income
- State law allows a 20% density bonus if developer provides the units on-site
- Developer can now build 144 units
- Developers may request additional height, reduced parking, etc. to make project work
- Developer could voluntarily propose to make the 12 units affordable to very low income instead of low income. They would then be eligible for a 32.5% density bonus (159 units in the project)

Density Bonuses: *How does it work with inclusionary zoning?*

EXAMPLE 2:

FOR-SALE TOWNHOME PROJECT
SUBJECT TO 10% MODERATE INCOME
INCLUSIONARY REQUIREMENT

- Developer owns 5-acre site
- Zoning allows 24 DUA
- Developer proposes 80 units
- 8 units must be affordable to moderate income
- State law allows a 5% density bonus (moderate income units are eligible for smaller bonus than low income)
- Developer doesn't need the bonus because their preferred housing product is below the maximum density
- State Density Bonus Law still allows developer to request a concession (setbacks, lot coverage, parking, etc.) to make the project more profitable

Inclusionary Zoning Next Steps

- Staff to develop draft ordinance based on Council direction
- November 8, 2022 – Planning Commission review and make recommendation on draft IZ Ordinance
- November 16 and December 14, 2022 – Council consider adoption of IZ Ordinance

Note: Mark your calendar for tentative Special Council Meeting on November 16, 2022

Summary of Policy Recommendations

	Policy Issue	Staff Recommendation
1	Percentage required	10 %
	Income group targeted	For Sale: Moderate Income (with option for low at lower percentage) For Rent: Low Income (with option for very low at lower percentage)
	Allowance for ADUs in lieu of for sale units in SF areas	Allow, but require 25% for developers choosing this option
2	Exemptions	Projects with less than 5 units
	Fractional Units	Projects with 5-9 units pay fractional fee Projects with 10+ units provide the required number of units, and pay fractional fee for “remainder”

Summary of Policy Recommendations

	Policy Issue	Recommendation
3	Alternate means of compliance	Structure to incentivize providing the unit(s) on-site Allow off-site at 1.5 X units Allow acquisition/rehab at 2X units Allow land donation to non-profit affordable housing developer
4	Design	Reduced unit size allowed Same design as market rate units, exception if ADUs used in single family areas
5	Length of Affordability	55 yrs for for-rent 45 yrs for for-sale
6	Townwide vs Commercial areas only?	Townwide, but provide the option of non-restricted ADUs in single family areas
7	Incentives	Rely on State Density Bonus



Thank you!

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