



# Inclusionary Zoning: Overview

Moraga Comprehensive Advanced Planning Initiative

Planning Commission Meeting

November 7, 2022



# Context

- The 2023-2031 Housing Element includes a policy recommendation to adopt an Inclusionary Zoning Ordinance
- Adoption of the Ordinance is being undertaken as part of the Comprehensive Advance Planning Initiative
- Staff has drafted the Ordinance and is seeking a Planning Commission (PC) recommendation to the Town Council
- PC hearing will be organized in two parts:
  - Nov 7: Orientation to Inclusionary Zoning and Program Components
  - Nov 14: Review and Recommendation on Draft Ordinance

# 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 incentives
- 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

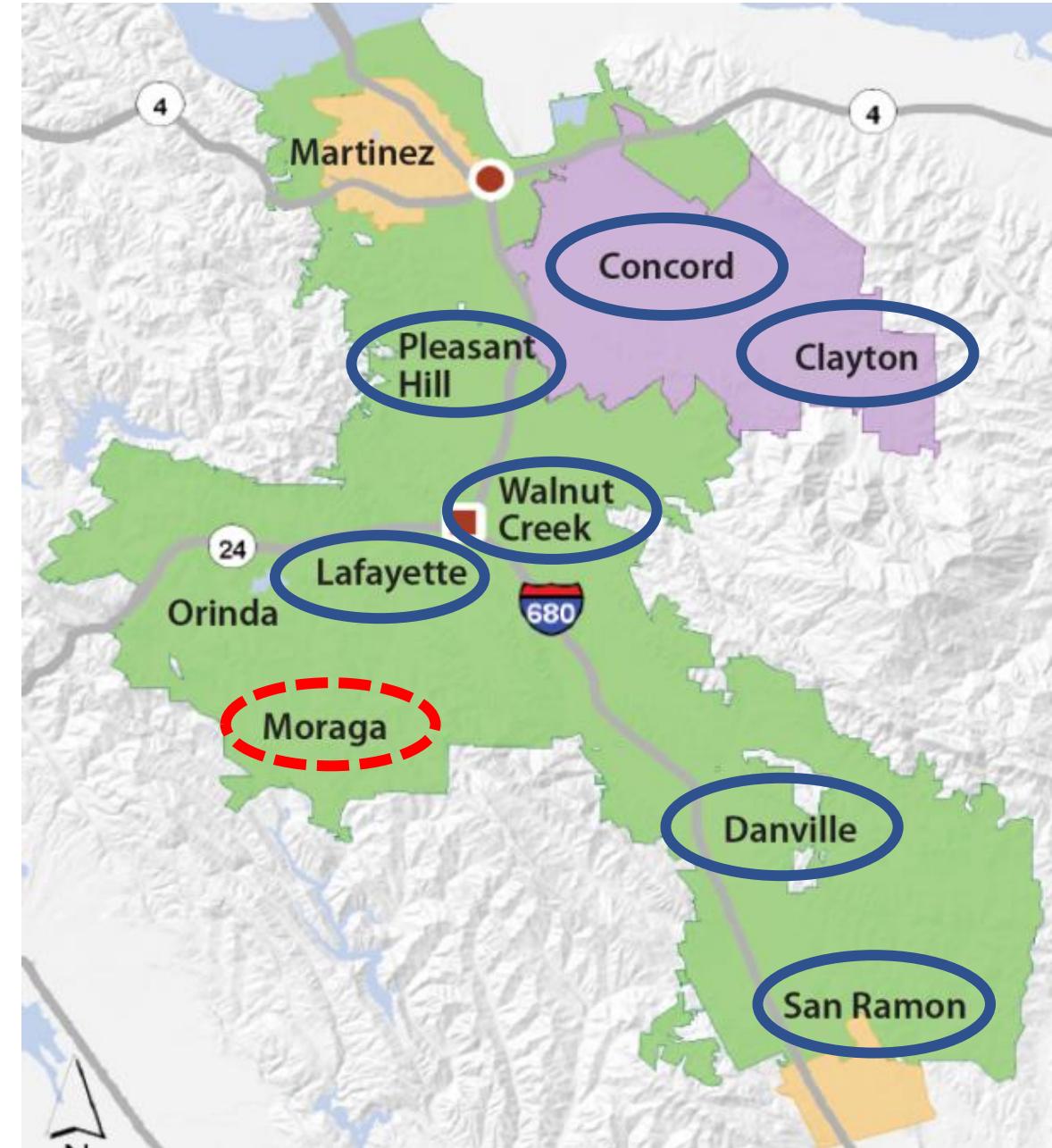
- Inclusionary ordinance affects project value
- If I.Z. percentage is too high, projects will not be feasible and will not proceed
- Incentives can offset the effect of inclusionary requirements by impacting development costs, project value, or both
- Upzoning can also offset the effect of inclusionary 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. Title/Purpose
2. Definitions
3. General Requirements/ Administration
  - Affordability Requirements, Allocation by Income, Exemptions and Fractional Units
4. Basic Provisions/ Scope
  - Design of BMR units, Timing, Term of Affordability
5. Alternative Means of Compliance
6. Incentives
7. Waivers and Enforcement

# Learning from our neighbors



# 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<br>For rent: 10% low or 6% very low  |
| Danville      | For sale: 10% moderate<br>For rent: 10% in small projects; 15% in large projects (all moderate)                         |
| Lafayette     | For sale: 15% (9% moderate plus 6% low)<br>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)<br>For rent: 15% (7.5% low plus 7.5% very low) |
| Walnut Creek  | For sale: 10% moderate (or 7% low or 6% very low)<br>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 Town Council Direction

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- 10% affordability
- For Rent requirement of 10% low
- For Sale requirement of 10% moderate
- Provide applicant with the flexibility to offer other percentages of equivalent value (to reach very low income, etc.)
- For single family for-sale housing provide applicant with option to include ADUs in 25% of all homes (no deed restrictions)
- Review the requirements in two years to determine effectiveness

# 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<br>< 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<br>Converted to fee in projects with 10+ units           |
| San Ramon     | < 2 units  | 2-9 units, converted to fee<br>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<br>Less than 0.7, converted to fee                   |

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

# Policy Consideration 2: Exemptions/Fractional Units

## Town Council Direction

- Projects with less than 5 units are exempt
- Projects with 6 – 9 units pay a fractional in lieu fee
- Projects with more than 10 units pay in lieu fee for fractional units or may provide another inclusionary unit

# 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<br>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

## Town Council Direction

- Strongly discourage the in-lieu fee option
- Allow new affordable units off-site, but at 15% of the total project instead of 10%
- Developer may acquire existing multifamily units located elsewhere within the city and rehabilitate those units as affordable, but at double the number required on-site
- Partner with affordable housing developer (including land donation)

# 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 & Timing

## Town Council Direction

- Units should have same exterior design features
- Units should be dispersed
- Lesser interior finishes are OK
- Access to common amenities should be required
- Comparable # of bedrooms OK (exception for ADUs)
- Inclusionary units can be smaller

# 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 yrs for ownership units
- Projects using State density bonuses are subject to additional limitations on length of affordability

## *Town Council Direction:*

- *55 years for rental units/ 45 years for owner-occupied units is OK*
- *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

## *Town Council Direction:*

- *OK to apply townwide, provided that lower density projects have the option of doing non-deed restricted ADUs instead of moderate-income units*

# 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)
- 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<br>15% Very Low                   | 50%           |
| 85% Market Rate<br>15% Low                        | 27.5%         |
| 90% Market Rate<br>10% Low                        | 20%           |
| 85% Market Rate for sale<br>15% Moderate for sale | 10%           |

# Policy Consideration 7: Staff Recommendations

- Provide density bonuses in accordance with State law
- Consider *local* bonuses on top of State bonuses:
  - Base density of 24 DUA on most housing opportunity sites
  - To achieve economically viable multi-family densities, bonuses allow 30 DUA
  - To incentivize housing types that are particularly desirable, bonuses allow:
    - Senior Housing (36 DUA)
    - Student Housing (36 DUA)
- Define low-income as 80% of AMI (State bonuses are based on 60% AMI, which requires deeper subsidy)
- Density bonus parking standards apply to entire project if 10% of units are 80% AMI
- Identify incentives in a separate policy resolution rather than in the Ordinance

# Developer Roundtable (Oct 20, 2022)

- 2 non-profit developers; 4 for-profit developers; Saint Mary's representative
- Feedback:
  - Maximize flexibility
  - Voluntary vs mandatory
  - Allow increased density (30+ DUA)
  - Reduce parking requirements
  - Allow for creative alternatives (ADUs, banking, etc.)



# Next Steps

- Ordinance has been drafted and will be published this week
- November 14, 2022 – Planning Commission will consider resolution recommending TC approval of Draft Ordinance
- November 16, 2022 – Council to receive presentation, discuss Draft Ordinance, provide feedback
- December 7, 2022 – Council to consider revised Ordinance for adoption
- December 14, 2022 – Second reading
- Ordinance effective date to be set for Spring 2023



**Inclusionary Zoning: Overview**  
**THANK YOU!**

