



Town of Moraga	Agenda Item
Public Hearing	8. A.

Meeting Date: December 7, 2022

TOWN OF MORAGA

STAFF REPORT

To: Honorable Mayor and Councilmembers

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

Subject: Conduct a Public Hearing and Consider Waiving the First Reading and Introducing by Title Only an Ordinance Adding Chapter 8.180 to the Moraga Municipal Code Creating an Affordable Housing Requirement for New Residential Development; and Provide Direction to Staff on the Proposed Development Incentives Policy for Projects Meeting the Town's Affordable Housing Requirements On-site (California Environmental Quality Act (CEQA) - Exempt Pursuant to CEQA Guidelines Section 15061(b)(3))

Request

The Town Council is being asked to consider waiving the first reading and introducing by title only an Ordinance adding Chapter 8.180 to the Moraga Municipal Code creating requirements for affordable housing in new residential development of six units or more. The Planning Commission held a study session on November 7 and conducted a public hearing on November 14, to consider the proposed Chapter 8.180. On November 14, the Commission voted 6-1 in support of a Resolution recommending Council adoption.

The Council is also being asked to provide direction on the proposed Development Incentives Policy for Projects Meeting the Town's Affordable Housing Requirements On-site which is tentatively scheduled for adoption on December 14, 2022.

Background

The Town is in the process of undertaking a Comprehensive Advanced Planning Initiative, including a State-mandated update of the Moraga Housing Element, and related General Plan and zoning amendments. As part of the Housing Element, the Town is required to demonstrate to the State Department of Housing and Community Development (HCD) that it has the capacity to add at least 1,118 new housing units by 2031, including 673 units that are potentially affordable to lower- and moderate-income households. The 1,118-unit assignment is commonly referred to as the Town's "RHNA"—or Regional Housing Needs Allocation.

1
2 While the Town is proactively rezoning property to accommodate its RHNA, additional
3 measures are needed to ensure that a substantial share of the housing built is actually
4 affordable to lower- and moderate-income households. Without Town intervention,
5 housing developers would likely produce only market rate units on designated housing
6 opportunity sites. Some of these units might meet affordability guidelines for moderate-
7 income households but few, if any, would be considered affordable to lower-income
8 households.¹ In the last two Housing Element cycles, the Town did not produce any of
9 the RHNA-required low- or very low-income housing units. HCD has classified Moraga
10 as a “High Resource Area” and is requiring such areas to meet a larger share of the
11 region’s affordable housing needs than they have in the past.

12
13 On November 10, 2022, the Town received the 90-day letter on the Working Draft
14 Housing Element. A common thread throughout the letter is that the Element must
15 demonstrate that the sites identified to meet the Regional Housing Needs Allocation
16 (RHNA) are distributed throughout the community in a manner that Affirmatively Furthers
17 Fair Housing (AFFH). HCD has provided Affirmatively Furthering Fair Housing (AFFH)
18 Guidance for All Public Entities and for Housing Elements, see [AFFH link](#). As of January
19 1, 2019, AB 686 creates a state mandate requiring public agencies and jurisdictions to
20 “take meaningful actions that overcome patterns of segregation and foster inclusive
21 communities free from barriers that restrict access to opportunity based on protected
22 characteristics.” The AFFH Guidance covers a wide range of locally-based solutions for
23 jurisdictions State wide, and also provides Examples of Affirmatively Furthering Fair
24 Housing Actions (page 72). The actions include Housing Mobility Strategies, New
25 Housing Choices and Affordability in Areas of Opportunity, Place-based Strategies to
26 Encourage Community Conservation and Revitalization, Protecting Existing Residents
27 from Displacement.

28
29 One of the tools commonly used and recommended by HCD to ensure that at least some
30 of the units in new developments are “affordable” is inclusionary housing (also called
31 inclusionary zoning). Inclusionary housing ordinances require developers to provide a
32 percentage of new residential units at a price that is considered affordable to very low-,
33 low-, or moderate-income households. The “Inclusionary” units have deed restrictions
34 that limit the rent (or sales price) that may be charged, as well as the annual income of
35 the tenant (or purchaser). Inclusionary Housing is an Affordable Housing tool to help the
36 Town meet its RHNA goal. Over 60 percent of the Town’s RHNA goal is comprised of
37 housing units that are affordable to lower- and moderate-income households. State
38 Density Bonus Law provides an additional tool to meet these targets; however, it is
39 voluntary while the proposed Inclusionary Zoning Ordinance would be mandatory.

40
41 Staff provided an overview on housing implementation tools, including inclusionary
42 housing, at a Joint Planning Commission and Town Council meeting on May 4, 2022.
43 After receiving the report, Council provided direction to staff for a more detailed

¹ In 2022, the upper income limit for a “lower income” household was \$76,750 for a one-person household, \$87,700 for a two-person household, \$98,650 for a three-person household, and \$109,600 for a four-person household. The equivalent “affordable” monthly housing costs were \$1,919 (1 pp), \$2,193 (2 pp), \$2,466 (3 pp), and \$2,740 (4 pp). For “moderate-income” households, affordable monthly housing costs were \$2,999 (1 pp), \$3,428 (2 pp), \$3,855 (3 pp), and \$4,283 (4 pp).

1 presentation at a future Town Council meeting. On August 24, 2022, staff provided a
2 focused discussion on Inclusionary Housing requesting feedback on policy prior to
3 developing an ordinance. The staff reports for these study sessions provide more context
4 and may be consulted for additional detail. Hyperlinks are provided below:
5

- 6 • The May 4, 2022 staff report may be accessed [here](#). (see pages 13-18)
- 7 • The August 24, 2022 staff report may be accessed [here](#).
- 8

9 The policy areas discussed at the August 24th meeting and the direction provided by
10 Council were as follows:
11

- 12 • The percentage of units that must be affordable. *Council direction was to include*
13 *a 10% affordability requirement.*
- 14 • The depth of affordability required (i.e., of the BMR units, what percentage need
15 to be very low, low, and moderate?) *Council direction was 10% low-income*
16 *affordability for rental units and 10% moderate affordability for for-sale units.*
- 17 • Exemptions (small projects may be exempt from the ordinance). *Council direction*
18 *was to provide an exemption for projects with five or fewer units.*
- 19 • Treatment of “fractional” units (when the total number of units is multiplied by the
20 percentage requirement, the product is usually not a round number). *Council*
21 *direction was to collect an in-lieu fee for fractional units.*
- 22 • Applicability to rental vs ownership units (most ordinances apply to both). *Council*
23 *direction was to apply the affordable requirement to both rental and ownership*
24 *units.*
- 25 • Alternatives for developers who wish to meet the requirement without providing the
26 unit(s) on-site (this allowance is required by State law). *Council provided direction*
27 *that the off-site affordable unit requirement should be 50 percent higher than the*
28 *percent required for on-site construction. Council also provided direction that if the*
29 *affordable requirement was met through acquisition and rehabilitation of existing*
30 *multi-family housing, at least two units shall be rehabilitated for each affordable*
31 *unit required.*
- 32 • Design of inclusionary units (do they need to look the same as the market rate
33 units?) *Council provided direction on the following:*
 - 34 ○ *The units should be dispersed through the project*
 - 35 ○ *The units should be comparable in terms of bedroom count, however, the*
36 *units may be smaller*
 - 37 ○ *The exterior design and character should be consistent with the market rate*
38 *units*
 - 39 ○ *The interior finishes may be different but they must be good quality*
 - 40 ○ *The affordable units must have access to all amenities.*
- 41 • Calculation of in-lieu fees. *Council directed staff to provide additional information*
42 *on a recommended methodology.*
- 43 • Length of affordability. *Council direction was that for-sale units should be*
44 *affordable for 45 years, while rental units should be affordable for 55 years.*

- Jurisdiction-wide vs applicability in specific areas only. *Council direction was that the ordinance should apply townwide.*
- Incentives that offset the economic impact of the inclusionary units. *Council direction was to take into consideration the concerns of developers.*

The Town Council also requested that staff solicit feedback from developers prior to developing an Inclusionary Housing Ordinance. Staff convened a “Developer Roundtable” on October 20 to receive input on potential Inclusionary Housing requirements. A link to the video of the Developer Roundtable can be found [here](#).

Staff has developed a Draft Affordable Housing Ordinance based on the input and feedback received from Town Council, at the Developer Roundtable, and from stakeholders. The Planning Commission received a presentation on the proposed Affordable Housing Ordinance on November 7. The Planning Commission held a public hearing to consider the proposed Ordinance on November 14, 2022.

The Commission approved a resolution recommending adoption of the Ordinance by a 6:1 vote at its November 14 meeting. Of the six Commissioners voting in favor, three supported the proposed Ordinance “as is” and three supported a modification to avoid encouraging additional housing units in wildland-urban interface areas. The Commission’s specific concern was that the proposal to allow developers in lower-density zones to meet affordable housing requirements through Accessory Dwelling Units (ADUs) would potentially increase the number of households in high fire hazard areas. The Commissioner casting the “no” vote on the Ordinance indicated his support for the concept of inclusionary zoning but expressed that it should apply only in the Town’s two commercial centers.

On November 16, the Town Council received a briefing on the proposed Ordinance. The following points were raised:

- The Town Council was generally supportive of Planning Commission direction to avoid creating incentives for additional housing units in wildland-urban interface areas. A distinction was made between the Town’s ADU regulations, which are guided by State law, and the proposed affordable housing provisions, which are set by the Town.
- The Council reiterated the desire to ensure the Ordinance is flexible and responsive to the real estate market.
- The issue of expanding public awareness of the proposed ordinance and soliciting community input to the extent possible was raised. Staff explained that public input had been solicited at meetings throughout 2022.
- The alternative of using market-rate ADUs rather than deed-restricted units (either for-sale or for-rent) was generally supported. Councilmembers expressed differing views on the proposed alternative, and discussion occurred regarding the 500 square foot minimum, the 25 percent threshold, and the potential applicability of the ADU alternative to higher density districts.

Local developer and property-owner David Bruzzone spoke at the November 16 meeting and provided correspondence on the Draft Ordinance. Mr. Bruzzone expressed his view that the Affordable Housing requirement should be voluntary rather than mandatory, that

1 there should be no size limit on ADUs for developers using the ADU option, that the ADU
2 option be available in all residential zoning districts, and that the Town allow “banking” or
3 “transfer” of affordable housing credits for developers building market rate housing in one
4 location while providing ADUs in another. Mr. Bruzzone further expressed that fees for
5 fractional units should be required at the time of occupancy rather than Final Map
6 approval or building permit issuance, that the “25 percent ADU option” be reduced to 10
7 percent, and that “off-site alternatives” require the same number of affordable units as the
8 “on-site” requirements. As directed by Council, Staff met with Mr. Bruzzone on November
9 22 to further discuss his concerns about the Ordinance.

10
11 The next section of this report provides an overview of the Draft Ordinance (Attachment
12 “A”). The Ordinance refers to a Policy Resolution (Attachment “B”) which will be adopted
13 by the Town Council separately, rather than as part of the Municipal Code Amendment.
14 The Policy Resolution includes development incentives. Because the incentives require
15 a greater degree of flexibility and potentially amendments in the future, they are not
16 included as part of the proposed Ordinance.

17 **Discussion**

18
19
20 The proposed Chapter 8.180 (Affordable Housing) is included as Attachment “A” to this
21 Report and is summarized as follows:

22
23 Sections 8.180.010 and .020 indicate the title and purpose of the Ordinance, respectively.
24 The purpose statement explains the importance of the Ordinance to meeting the Town’s
25 RHNA and providing a tool for affirmatively furthering fair housing and creating housing
26 for the Moraga workforce, seniors, students, and other special needs groups in the
27 community.

28
29 Section 8.180.030 provides definitions of key terms used in the Ordinance. All of the
30 terms referenced in the definition appear in later sections of the Ordinance.

31
32 Section 8.180.040 identifies the General Requirements for the program, including the
33 types of projects that are covered (and exemptions), and the percentage of affordable
34 units that are required. Recognizing economic considerations, the Ordinance has
35 different requirements for for-rent and for-sale housing and allows flexibility in the
36 percentages of affordable units to be provided based on the depth of affordability. This
37 section also addresses “fractional” units.

38
39 Section 8.180.050 addresses Administration of the program, including requirements for
40 inclusionary housing plans and agreements. The agreements establish resale restrictions
41 for inclusionary for-sale units, and rental restrictions for rental units, as well as provisions
42 to monitor compliance once units are created. This section also gives the Council the
43 authority to adopt in-lieu fees for fractional units, Very High Fire Hazard Severity Zones
44 and for developers who cannot feasibly provide the inclusionary housing units on-site.
45 The basis for the fee is the gap between the value of a market-rate unit and an affordable
46 unit, which will be established through a future fee resolution.

1 Section 8.180.060 identifies alternative means of compliance. In each case, the Town
2 Council must find that on-site provision of affordable units is infeasible or that greater
3 public benefit will result from the units being off-site. The alternative options include
4 building the units off-site, partnering with a non-profit for off-site construction, acquiring
5 and rehabilitating existing multi-family housing in Moraga and making it affordable, or
6 paying an in-lieu fee. The Ordinance also allows applicants to propose other creative
7 concepts for meeting the requirements of the chapter.

8
9 Section 8.180.070 indicates the standards for inclusionary units. This includes the
10 required length of affordability (45 years if for-sale, 55 years if for-rent), requirements for
11 the design of affordable units, and requirements for timing (i.e., when the inclusionary
12 units become available relative to the market rate units).

13
14 Section 8.180.080 identifies incentives to offset the profit loss associated with limiting
15 rents and sales prices for the inclusionary units. These incentives include fee deferral (at
16 the discretion of the Town Council), density bonuses, and modified development
17 standards that support the development of additional units. The incentives are designed
18 to work in tandem with the State density bonus program. The bonuses and incentives
19 themselves are not quantified in the Municipal Code, but a separate document (to be
20 adopted by Resolution) would establish a schedule for use in future applications.

21
22 Section 8.180.090 provides further detail for applicants who choose to comply with the
23 Inclusionary Ordinance by providing accessory dwelling units (ADUs) rather than deed
24 restricted affordable units. This option is only available to for-sale development in lower-
25 density zoning districts. Projects choosing this option are not eligible for density bonuses
26 but also are not subject to limitations on occupancy, income, or rent of the ADUs.

27
28 Section 8.180.100 includes provisions for applicants requesting waivers or adjustments
29 to the requirements. These are only available in limited circumstances and are subject
30 to approval by the Town Council. Section 8.180.110 addresses enforcement and includes
31 provisions for appeal.

32
33 The sections below highlight how specific issues are addressed by the proposed
34 Ordinance.

35 36 *Exemptions/ Applicability*

37
38 The Ordinance would apply to all residential projects with six or more units. Projects with
39 five or fewer units would be exempt. The Ordinance would apply Town-wide, but projects
40 in lower density zones would have the option of meeting the inclusionary requirement
41 through ADUs, as described below.

42 43 *Percentage of Units Required and Depth of Affordability*

44
45 In rental projects, applicants would meet the requirement by dedicating 10 percent of the
46 units for low-income households. Consistent with the RHNA, low income is defined as
47 80% of areawide median income (AMI) and very low income is defined as 50% of AMI.

1 “Affordable” rents may represent no more than 30 percent of monthly income for
2 households in these units.

3
4 In for-sale projects, applicants are required to dedicate 10 percent of the units for
5 purchase by moderate income households. However, in zones with densities of R-6 or
6 lower (e.g., R-6, 3 DUA, 2 DUA, 1 DUA, and Rural Residential), developers may meet the
7 requirement by including ADUs in 25 percent of all new housing units. No deed
8 restrictions or occupancy limitations would apply to the ADUs.

9
10 The Ordinance is written in a flexible manner so that developers may propose alternative
11 percentages upon demonstration that they are of equivalent value to the Town. For
12 instance, a developer may propose a smaller inclusionary percentage in a rental project
13 if the inclusionary units serve *very low-income* households rather than *low-income*
14 households.

15 16 *Fractional Units and In-lieu Fees*

17
18 The Ordinance gives the Town Council the authority to adopt an in-lieu fee. The primary
19 purpose of the fee would be to calculate the amount due for fractional units. In other
20 words, if an applicant proposed a 24-unit rental project, they would be required to include
21 2.4 lower income units in their project (or a smaller number of very low-income units
22 equivalent in value). Since dwelling units are counted in whole numbers, the “fractional”
23 remainder would be converted to a fee. The amount of the fee has not been established
24 and would be determined by the Town Council. The basis for the fee is included in the
25 Ordinance. It represents the gap between the market-rate price (sales or rent) and the
26 affordable price (sales or rent) of the inclusionary unit.

27 28 *Alternate Means of Compliance*

29
30 AB 1505 requires that at least one alternate means of compliance is provided in
31 inclusionary housing ordinances. Some developers may find it infeasible to include
32 affordable units in their projects, and request relief through such alternate means. As
33 noted above, the alternatives are off-site construction, acquisition/rehabilitation of existing
34 units, and partnership with a non-profit developer. In the latter case, the partnership could
35 include land donation and financial assistance to facilitate off-site construction of
36 affordable units. The off-site alternatives require higher ratios of affordable units to
37 market rate units. The goal is to assist the Town in meeting AFFH requirements and
38 prioritize units built on site.

39
40 For off-site construction (or assistance to a non-profit), a ratio of 1.5:1 is applied so that
41 the applicant must build 50% more units than would otherwise be required. For
42 developers choosing acquisition/rehab in lieu of building the units off-site (or assistance
43 to a non-profit for this purpose), the applicant must rehabilitate twice the number of units
44 that would otherwise be required. The higher ratios are intended to disincentivize the
45 alternatives and encourage applicants to build the units on-site.

1 As noted earlier, another alternate means of compliance is provided for lower-density
2 residential projects (R-6 or lower). This refers to the provision to include ADUs in 25
3 percent of the units rather than dedicating deed-restricted affordable units.

4
5 Based on Planning Commission and Town Council input, staff has added a new
6 alternative that provides developers in Very High Fire Hazard Severity Zones with the
7 option to pay an in-lieu fee rather than developing the 10% affordable units.

8
9 The Ordinance also allows developers to propose other “creative concepts” for meeting
10 the intent of the requirement, subject to Town Council approval.

11 12 *Length of Affordability*

13
14 The Ordinance proposes that for-sale units are deed restricted for 45 years, and for-rent
15 units are deed restricted for 55 years. These affordability terms are consistent with State
16 Density Bonus Law.

17 18 *Timing of Construction*

19
20 The Ordinance requires inclusionary units to be constructed prior to or concurrently with
21 construction of the market rate units. In general, construction of affordable units may not
22 be deferred to a future date after the market rate units are completed. However, the
23 Ordinance does establish limited opportunities for a deferral of up to three years where
24 an Agreement has been signed between the market-rate developer and an affordable
25 housing developer. This is in response to comments by developers at the roundtable
26 meeting.

27 28 *Design*

29
30 The Ordinance requires that the inclusionary units be reasonably dispersed around the
31 project, comparable in bedroom count, compatible in exterior design and character, and
32 have access to all amenities in the project. However, inclusionary rental units may be
33 20% smaller than market-rate units, and inclusionary for-sale units may be 30% smaller
34 than market-rate units. The inclusionary units may have different interior finishes than
35 the market rate units, provided they are durable and of high quality.

36 37 *Policy Resolution: Development Incentives for Projects Meeting the Town’s Affordable* 38 *Housing Requirements On-Site*

39
40 Attachment “B” to this Staff Report is a Policy Resolution with specific bonuses and
41 incentives available to developers providing inclusionary units on-site. Developers are
42 entitled to the bonuses provided by the State of California under State Density Bonus Law
43 (SDBL), and an additional local bonus that allows construction of 30 to 36 units per acre.
44 Developers are further entitled to incentives comparable to those offered through the
45 SDBL.

46
47 The Policy Resolution is proposed for adoption at the December 14 Council meeting,
48 following the Second Reading of the Ordinance. The incentives can be adopted by

1 resolution rather than by ordinance so that they can be more easily amended in the future.
2 The incentives respond to feedback from the developer roundtable that multi-family
3 projects may not be economically viable at the proposed General Plan and zoning density
4 of 24 units per acre. Additional incentives have been proposed on top of those already
5 allowed by the State, enabling densities of up to 30 units per acre for projects complying
6 with the Ordinance, and up to 36 units per acre for projects providing student or senior
7 housing.

8
9 The incentives would allow some of the provisions of SDBL for lower-income households
10 to apply to projects with affordable housing units serving households earning up to 80
11 percent of AMI. Current SDBL defines low-income households as earning up to 60
12 percent of AMI, so the broader definition (which is consistent with the RHNA definition)
13 would provide an expansion of potential incentives. More specifically, projects meeting
14 the inclusionary requirements on-site would be eligible for the SDBL parking standards,
15 which are lower than the Town's standards, plus one development incentive, such as
16 reduced setbacks, additional height, or increased lot coverage.

17 18 **Next Steps**

19
20 The December 7 meeting is the first reading of the Ordinance. A second reading is
21 scheduled for December 14. The Council is scheduled to adopt the Policy Resolution
22 concurrently with the second reading on December 14. The Ordinance will become
23 effective on January 13, 2023, 30 days after the second reading. Once adopted, the
24 effectiveness of the Ordinance and policy resolution will be periodically evaluated, with
25 modifications made as needed based on results.

26
27 The Town Council has retained Keyser Marston, an economics consulting firm, to develop
28 the in-lieu fee/ fractional fee required to implement the Affordable Housing Ordinance.
29 The Council is scheduled to consider a resolution at the January 11, 2023 meeting to
30 adopt the fee.

31 32 **CEQA**

33
34 The proposed Municipal Code Amendments are exempt from the provisions of the
35 California Environmental Quality Act (CEQA) (Public Resources Code Section 2100, et
36 seq.) pursuant to CEQA Guidelines Section 15061(b)(3). Adoption and implementation
37 of the proposed Ordinance does not constitute a "project" as defined by CEQA because
38 the Ordinance by itself would not result in a direct physical change to the environment or
39 a reasonably foreseeable indirect change.

40
41 The Code Amendments are occurring within the context of a broader planning initiative
42 that is subject to CEQA. A Draft EIR has been prepared for the Comprehensive Advanced
43 Planning Initiative and was published on October 27. The comment period for the
44 Planning Initiative EIR ends on December 12, 2022 at 5:00 p.m.

1 **Fiscal Impact**

2
3 Adoption of affordable housing requirements will require the collection of fees for
4 fractional units. A dedicated Affordable Housing Fund would be created by the Town as
5 a repository for these fees. As they accrue, the fees would be used to support Housing
6 Element programs and potentially provide a supplemental funding source for non-profit
7 affordable housing developers. There would be additional costs associated with
8 administering affordable housing requirements, reviewing affordable housing plans and
9 Agreements, and monitoring compliance with the program. Some of these functions
10 could be carried out by third parties, as the Town has limited staff capacity.

11
12 **Recommendations**

- 13
14 1. Find the proposed Municipal Code Amendments to be exempt from CEQA pursuant
15 to CEQA Guidelines Section 15061(b)(3) and Adopt Ordinance ____ Amending the
16 Moraga Municipal Code to create Chapter 8.180 – Affordable Housing (first reading).
17 2. Provide feedback to staff on the proposed Development Incentives Policy for Projects
18 Meeting the Town's Affordable Housing Requirements On-site.

19
20 **Report reviewed by: Cynthia Battenberg, Town Manager**
21 **Karen Murphy, Assistant Town Attorney**
22

23 **Attachments:**

- 24
25 **A.** Draft Ordinance Amending the Moraga Municipal Code to Add Chapter 8.180:
26 Affordable Housing
27 **B.** Draft Development Incentives Policy for Projects Meeting the Town's Affordable
28 Housing Requirements On-Site

ATTACHMENT A

Draft Ordinance Amending the Moraga Municipal Code to
Add Chapter 8.180: Affordable Housing

Attachment A: Draft Ordinance.

NOTE: Changes from the version provided on November 16 are identified in redlined text.

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the Matter of:

**An Ordinance Adding
Chapter 8.180 to the Moraga
Municipal Code to Create an
Affordable Housing Requirement for
New Residential Development**

Ordinance No. -2022

Affordable Housing

WHEREAS, the State of California has found that local governments have a responsibility to facilitate the development of housing for all economic segments of the community (Government Code Section 65580(d)); and

WHEREAS, the Regional Housing Needs Allocation (RHNA) assigned to the Town of Moraga by the Association of Bay Area Governments requires that the Town plan for 1,118 units of new housing between 2023 and 2031, including 673 units affordable to very low-, low-, and moderate-income households; and

WHEREAS, the Town of Moraga has not produced a sufficient number of affordable units to meet its RHNA in prior Housing Element cycles; and

WHEREAS, the State of California has provided limited funding for affordable housing construction, thereby requiring the private sector to participate in meeting the Town's RHNA;

WHEREAS, the Town currently does not have mechanisms in place to compel developers to include housing affordable to very low-, low-, and moderate-income households in future projects; and

WHEREAS the median sales price of a home in Moraga exceeded \$1.5 million in 2022, and the median rent for a two-bedroom apartment was \$2,900, prices that are not affordable to lower-income households; and

WHEREAS, the shortage of affordable housing in Moraga has resulted in many households overpaying for their housing, including 23 percent of the town's renters paying more than 50 percent of their incomes on housing and over 60 percent of the town's very low-income households paying more than 50 percent of their incomes on housing; and

WHEREAS, the shortage of affordable housing in the town has also led to insufficient supply of housing for the local workforce and student population, leading to overcrowding in some units, and long commutes as workers seek affordable housing in other communities; and

WHEREAS, a stated Goal of the Moraga Housing Element is to achieve a balanced supply of housing for all income groups; and

WHEREAS, legislation adopted in 2017 (AB 1505; Government Code Sections 65850(g) and 65850.01) authorizes cities to adopt inclusionary requirements for rental residential developments, provided that such ordinances provides alternative means of compliance, and the proposed Ordinance provides such alternative means of compliance; and

WHEREAS, additional legislation adopted in 2017 (SB 686) requires that every jurisdiction in California affirmatively further fair housing by distributing opportunities for very low-, low-, and moderate-income housing in multiple locations rather than concentrating it in a single location, an outcome that is supported by this Ordinance; and

WHEREAS, the Town has drafted a 2023-2031 Housing Element in compliance with State law that includes a program to adopt an Inclusionary Zoning Ordinance; and

WHEREAS, the Moraga Town Council convened a public meeting on May 4, 2022 to discuss tools for implementing affordable housing policies and expressed support for an inclusionary housing requirement; and

WHEREAS, the Moraga Town Council convened a public meeting on August 24, 2022 to discuss a framework for inclusionary housing and to provide direction to staff on the specific components of an Ordinance; and

WHEREAS, the Town of Moraga convened a developer roundtable on October 20, 2022 to solicit input from the development community on ways to mitigate the economic effects of an inclusionary housing requirement; and

WHEREAS, the Town finds that the housing shortage for persons of very low, low, and moderate incomes is detrimental to the public health, safety and welfare and that it is a public purpose of the Town, and a public policy of the State of California, to make an adequate supply of housing available for persons of all income groups; and

WHEREAS, on November 14, 2022, the Planning Commission held a duly noticed public hearing to consider the proposed amendments related to affordable housing, received the staff report and staff presentation, received comments from the public and interested parties, and after closing the public comments portion discussed the matter; and

WHEREAS, following the November 14, 2022 public hearing, the Moraga Planning Commission adopted Resolution No.##-2022, recommending that the Town Council adopt proposed amendments to Town of Moraga Municipal Code to add Chapter 8.180, Affordable Housing, as contained herein; and

WHEREAS, the Town Council received a briefing on the proposed Ordinance at its regularly scheduled meeting on November 16; and

WHEREAS, the Town Council introduced this Ordinance on

December 7, 2022, after a duly noticed public hearing and adopted the Ordinance on December 14, 2022;

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

SECTION 1. The City Council finds that the proposed Municipal Code amendments are **exempt** from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) in that they do not constitute a “project” as defined by CEQA since they do not have the potential to result in either a direct physical change to the environment or a reasonably foreseeable indirect physical change to the environment.

SECTION 2. Amendment. Title 8 of the Moraga Municipal Code, Planning and Zoning, is hereby amended to add Chapter 8.180 “Affordable Housing” as follows:

CHAPTER 8.180: AFFORDABLE HOUSING

8.180.010 – Title

This chapter shall be entitled the Affordable Housing Ordinance.

8.180.020 - Purpose

The purpose of this Chapter is to establish standards and procedures to facilitate the development and availability of housing for all economic segments of the community, as required by State law. The Chapter is one of several tools to implement the Town’s Housing Element and fulfill the Town’s obligation to provide housing for very low-, low-, and moderate-income households. It is also a tool for providing housing for the Moraga workforce as well as groups with special housing needs such as college students, persons with disabilities, and older adults. This Chapter supports the State mandate to affirmatively further fair housing by ensuring that housing for lower income households is geographically dispersed and not concentrated in a single location within the Town.

8.180.030 - Definitions

For the purposes of this Chapter, the words and phrases below shall be interpreted as set forth in this section, unless it is apparent from the context that a different meaning is intended.

"Accessory Dwelling Unit," or "ADU," is defined in Chapter 8.124.020.

“Affordable Housing Agreement” means a legally binding, written agreement between a Developer and the Town, in form and substance satisfactory to the Planning Director and Town Attorney, setting forth those provisions necessary to ensure that the requirements of this Chapter, whether through the provision of Inclusionary Units or through an alternative method, are satisfied.

“Affordable Housing Fund” is a separate fund of the Town into which all monies collected pursuant to this Chapter shall be deposited. Additional monies from other sources also may be deposited in the Affordable Housing Fund.

“Affordable Housing Plan” means a plan demonstrating how an Applicant will comply with the requirements of this Chapter and containing the components listed in Section 8.180.050(B).

“Affordable Rent” means monthly rent and utility allowance, which does not exceed one-twelfth of 30 percent of the maximum annual income for a household of the applicable income level.

“Affordable Sales Price” means a sales price which results in a monthly mortgage (including principal and interest), property taxes, utilities, and homeowner association fees, where applicable, which do not exceed one-twelfth of 35 percent of the maximum annual income for a household of the applicable income level.

“Amenities” means and includes features which are not essential to the health and safety of the resident, but provide visual or aesthetic appeal, or are provided as conveniences rather than as necessities. Interior amenities may include, but are not limited to, fireplaces, garbage disposals, dishwashers, cabinet and storage space and bathrooms in excess of one. Exterior amenities include features such as patios and balconies, and common facilities accessible to a development such as fitness centers, play areas, resident community rooms, gardens, bike storage facilities or similar conveniences provided for residents of the development. Amenities do not include items required by building codes or other ordinances that are necessary to ensure the safety of the building and its residents.

“Applicant” means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks Town real property development permits and approvals.

“Area Median Income” means the Area Median Income for Contra Costa County, adjusted for household size, as published by the State Department of Housing and Community Development.

“Developer” means the same as “Applicant” (see above definition).

“Dwelling Unit” means a building of portion thereof that is designed, intended, or used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. For purposes of this Chapter, “Dwelling Unit” does not include an Accessory Dwelling Unit. Dwelling Units include “For-Sale Units” and Rental Units” as defined elsewhere in this section.

“For-Sale Units” means a single-family detached Dwelling Unit or a Dwelling Unit in a multifamily Residential Development that will be offered for sale, not for rent.

“Fractional Unit” is a numeric equivalent that is less than one Dwelling Unit. It is the product of the affordable housing percentage requirement multiplied by the number of units in a Residential Development and expressed to one decimal point, minus the nearest whole number below that product.

“Household” means one person living alone or two or more persons sharing residency.

“Incentive” means a benefit offered by the Town to facilitate construction of Residential Developments which include Inclusionary Units. Among others, Incentives may include fee reductions for Inclusionary Units, density bonuses beyond State requirements, and flexibility and/or relaxation of development regulations. Incentives are adopted through a Policy Resolution.

“Inclusionary Unit” means a Dwelling Unit developed pursuant to an Affordable Housing Agreement that will be offered For-Sale or rent to Very Low-, Low- and Moderate- Income Households, at an Affordable Rent or Affordable Sales Price, as applicable, pursuant to this Chapter.

“In-Lieu Fee” means a fee paid to the Town by an Applicant for a Residential Development in the Town in lieu of providing the Inclusionary Units required by Section 8.180.040. It includes fees for Fractional Units, as defined in this Section.

“Low-Income Household” means a household with an annual income between 50 percent and 80 percent of Area Median Income limits applicable to Contra Costa County, adjusted for household size, as published by the State Department of Housing and Community Development for Contra Costa County.

“Market-Rate Units” mean those Dwelling Units in a Residential Development that are not Inclusionary Units or otherwise subject to deed restrictions and income limits.

“Moderate-Income Household,” means a household with an annual income between 80 percent and 120 percent of Area Median Income limits applicable to Contra Costa County, adjusted for household size, as published by the State Department of Housing and Community Development for Contra Costa County.

“Rental Unit” means a single-family detached Dwelling Unit or a Dwelling Unit in a multifamily Residential Development that will be offered for rent, not for sale.

“Residential Development” means a development of six (6) or more residential units or lots for, without limitation, detached single family dwellings, multiple dwelling structures, groups of dwellings, condominium conversions, cooperative developments and land subdivisions.

“Town” means the Town of Moraga or its designee, or any entity with which the Town contracts with to administer this section.

“Very Low-Income Household” means a household whose income does not exceed 50 percent of the Area Median Income limits applicable to Contra Costa County, adjusted for household size, as published by the State Department of Housing and Community Development for Contra Costa County.

8.180.040 General Requirements

Each Residential Development shall be subject to the requirements set forth in this Section. Developments with five or fewer Dwelling Units are exempt from this Chapter.

A. For-Rent Residential Developments:

- (1) At least ten (10) percent of the Rental Units shall be Inclusionary Units for occupancy by Low-Income Households; or

- (2) The Developer may propose alternate percentages of Low- and Very Low-income Rental Units to meet this requirement upon demonstration that they are of equivalent value. Satisfying the requirement with moderate-income Rental Units is not permitted.

B. For-Sale Residential Developments:

- (1) At least ten (10) percent of the Dwelling Units shall be Inclusionary Units for occupancy by Moderate-Income Households. These units may be either Rental or For-Sale Units, or a combination of both. Any Rental Units that are provided shall be subject to an agreement prepared by the Applicant and approved by the Town, including provisions ensuring the long-term affordability of the units and their occupancy by a qualifying Household; or
- (2) For Residential Developments in zoning districts of R-6 densities or lower, at least 25 percent of the Dwelling Units shall include Accessory Dwelling Units. These units are subject to the provisions defined in Section 8.180.090 and shall have no restrictions on income or occupancy.

C. Incentives, as specified in Section 8.180.080 shall be available to Applicants meeting the inclusionary requirements on-site.

D. Residential Developments with six (6), seven (7), eight (8), or nine (9) units shall have the option of providing one full Inclusionary Unit or paying the In-Lieu Fee in an amount equal to the following schedule for the fractional unit multiplied by the In-Lieu Fee as authorized in Section 8.180.050(D)(4).

<u>Total Units in Project</u>	<u>Fractional Inclusionary Unit Required</u>
6	0.20
7	0.40
8	0.60
9	0.80

E. Applicants proposing ten (10) or more units shall calculate the required number of Inclusionary Units. In the event this calculation results in a Fractional Unit, the Developer shall have the option of either: (i) providing a full Inclusionary Unit; or (ii) paying an In-Lieu Fee in an amount equal to the percentage represented by the fractional unit multiplied by the In-Lieu Fee, as authorized in Section 8.180.050(D)(4).

F. Additional units authorized through a density bonus under California Government Code Section 65915(b)(1) or (b)(2) will not be counted in determining the required number of Inclusionary Units. Inclusionary requirements apply to the initial base number of units proposed.

8.180.050 Administration

- A. Applicability. Any Town action approving a Residential Development subject to this Chapter shall contain conditions sufficient to ensure compliance with the provisions of this Chapter. No building permit or final inspection shall be issued, nor any development approval granted which does not meet the requirements of this Chapter.
- B. Affordable Housing Plan. Developers subject to the provisions of this Chapter shall prepare a draft Affordable Housing Plan setting forth in detail the manner in which the requirements shall be implemented as part of their development application. No discretionary approval, Town approval or building permit shall be issued until the Affordable Housing Plan has been finalized and approved by the entity approving the underlying approval or permit. The Affordable Housing Plan shall be submitted as part of the initial application and include:
- (1) The location, tenure (rental or ownership) and size of the proposed Market-Rate and Inclusionary Units;
 - (2) The calculations used to determine the number of Inclusionary Units;
 - (3) A floor plan or site plan depicting the location of the Inclusionary Units;
 - (4) The affordability level for each Inclusionary Unit;
 - (5) The term of affordability;
 - (6) A phasing plan for the Inclusionary Units, in the event the project includes phases;
 - (7) A description and details of any requested density bonuses, Incentives, waivers or exemptions;
 - (8) The process by which eligibility of qualified Households will be reviewed and selected to rent or purchase affordable units;
 - (9) An annual reporting schedule; and
 - (10) Additional information that may be requested by the Planning Director.
- C. Affordable Housing Agreement. The Developer shall execute and cause to be recorded an Affordable Housing Agreement with the Town prior to the earlier of the issuance of the first building permit or final map approval. The form of the Affordable Housing Agreement will vary depending on the manner in which the provisions of this Chapter are satisfied for a particular development and whether an Alternative is proposed and approved. All Affordable Housing Agreements for Residential Developments providing Inclusionary Units on-site must include, at a minimum, the following:
- (1) Description of the development, including whether the Inclusionary Units will be rented or owner-occupied;
 - (2) The number, size and location of Very Low-, Low- or Moderate-income Units;
 - (3) Inclusionary Incentives offered by the Town that are being requested, including the nature and amount of any local public funding;
 - (4) Provisions and/or documents for resale and/ or rental restrictions, rights of first refusal, and/or rental restrictions, and performance deeds of trust, as appropriate;

- (5) A deed restriction or other enforceable obligation approved by the Town Attorney ensuring the ongoing affordability requirements (this requirement shall not apply to Developers of For-Sale Units using the Accessory Dwelling Unit option described in Section 8.180.90); and
- (6) Provisions for monitoring the ongoing affordability of the units and the process for qualifying prospective resident Households for income eligibility.

D. In-Lieu Fees. The Town Council shall, by resolution or other action, establish an Affordable Housing In-Lieu Fee. Fees may be based on a fee per Market-Rate unit, fee per square foot, or any other reasonable basis. The fees may be periodically adjusted based on the annual percentage increase or decrease in the construction cost index since the last update.

- (1) For-Sale Units. The fee amount should represent a reasonable portion of the gap between the Affordable Sales Price at the corresponding income level and the Market-Rate sales price of for-sale housing of a similar product type.
- (2) Rental Units, the fee amount should represent a reasonable portion of the gap between the Affordable Rent at the corresponding income level and the market-rate rent for a similar product type over the lifetime of the affordability term.
- (3) Affordable Housing Fund. All fees collected shall be deposited in an Affordable Housing Fund. The monies deposited in the Affordable Housing Fund must be used to increase or maintain the supply of housing affordable to very low-, low-, and moderate-income Households, including reasonable administrative or related expenses.
- (4) Applicability to Fractional Units. The In-Lieu Fee shall be applied to Fractional Units that result when the inclusionary requirements are applied to Residential Development when the Applicant chooses not to build an additional Inclusionary Unit.
- (5) Timing of Payment. Payment of In-Lieu Fees is due as follows:
 - a. For custom lot subdivisions where lots will be sold and homes will be constructed a future date, the In-Lieu Fee shall be paid at time of Final Map approval.
 - b. For all other Dwelling Units, the fee shall be paid to prior to building permit issuance for the project.

8.180.060 Alternatives

In lieu of including the Inclusionary Units in the Residential Development pursuant to Section 8.180.040, the requirements of this Chapter may be satisfied through the alternatives listed below. In each case, the Town Council must first find that on-site production of the Inclusionary Units is infeasible or that greater public benefit will result from the proposed alternative.

- A. Off-Site Alternatives for Developer. As an alternative to providing all or a portion of the Inclusionary Units on the same site as the Residential Development, the Developer may

elect to construct the units off-site elsewhere in the Town of Moraga, subject to the following requirements:

- (1) At least 1.5 units shall be provided for each Inclusionary Unit required.
- (2) The following provisions shall apply to the off-site development:
 - a. The off-site development shall be governed by the terms of a deed restriction limiting occupancy of the required number of units to qualified Low- or Very Low-Income households and establishing rents meeting affordability criteria for Low or Very Low-Income households.
 - b. Environmental review shall have been completed, including provisions to mitigate any hazardous materials or geologic conditions, to the satisfaction of the Town .
 - c. If applicable, the off-site units shall include a declaration of covenants, conditions, and restrictions similar to that required for on-site Inclusionary Units.
 - d. Construction of the off-site Inclusionary Units shall be completed prior to the issuance of the first certificate of occupancy of the Residential Development,
 - e. The off-site parcel shall have General Plan and zoning densities equivalent to R-6 or higher.

B. Agreement with Non-Profit Developer. As an alternative to providing all or a portion of the Inclusionary Units on the same site as the Residential Development, the Developer may enter into an agreement with a non-profit developer to (i) fund a portion of a proposed affordable housing project in Moraga; or (ii) to provide a land donation for the construction of affordable housing units on an alternative site in the Town of Moraga, subject to the following requirements:

- (1) At least 1.5 units shall be provided for each Inclusionary Unit required.
- (2) The value of the land donation and/or funding shall be approximately equivalent to or greater than the Developer cost associated with Alternative (A) described above.
- (3) The Developer and the Non-Profit Housing Developer shall enter into a signed written agreement to construct the required Inclusionary Units at the time of project entitlement.
- (4) The following provisions shall apply to the off-site residential development:
 - a. The off-site development shall be governed by the terms of a deed restriction limiting occupancy of the required number of units to qualified Low or Very Low-income households and establishing rents meeting affordability criteria for Low or Very Low-income households.
 - b. If applicable, the off-site units shall include a declaration of covenants, conditions and restrictions similar to that required for on-site Inclusionary Units.
 - c. In the event that off-site construction is used, the Affordable Housing Agreement shall include a construction schedule which ensures the off-site units will be available for occupancy concurrently with the Market-Rate Units. Where concurrent construction cannot be guaranteed, an alternate method may be used to ensure construction within three years of occupancy of the Residential Development.

- d. The off-site parcel shall have General Plan and zoning densities equivalent to R-6 or higher.
- C. Acquisition, Rehabilitation, and Deed Restriction of Existing Multi-Family Housing Units. As an alternative to providing all or a portion of the Inclusionary Units on the same site as the Residential Development, the Developer may acquire housing units on an alternative site in Moraga and rehabilitate and deed restrict the units as affordable units, subject to the following requirements:
 - (1) At least 2.0 rehabilitated units shall be provided for each Inclusionary Unit required.
 - (2) The following provisions shall apply:
 - a. The off-site development shall be governed by the terms of a deed restriction limiting occupancy of the required number of units to qualified Low or Very Low-income households and establishing rents meeting affordability criteria for Low or Very Low-income households.
 - b. If applicable, the off-site units shall include a declaration of covenants, conditions and restrictions similar to that required for on-site Inclusionary Units.
 - c. The Affordable Housing Agreement shall include a schedule which ensures the off-site units will be available for occupancy concurrently with the Market-Rate project. Where concurrent implementation cannot be guaranteed, an alternate method may be used to ensure implementation within three years of occupancy of the Residential Development.
 - d. With respect to rehabilitation, a tenant displacement reduction plan shall be prepared by the Developer, including relocation assistance and first right of return for impacted tenants.
- D. In-Lieu Fee for Projects in Very High Fire Severity Zones (VHFSZ). Applicants of projects in a VHFSZ as determined by CAL FIRE may at their discretion, select to pay an in-lieu fee as an alternative to constructing the affordable units on-site, off-site, or through Accessory Dwelling Units (ADUs). Nothing in this provision precludes the owner from including ADUs in their project, as permitted by State law.
- E. Alternate Methods of Compliance. Applicants may propose creative concepts for meeting the requirements of this Chapter, whether on or off-site. The Town Council may approve such alternate methods if the Applicant demonstrates that the purpose of this Chapter (as set forth in Section 8.18.020) has been met.

8.180.070 Standards

- A. Term of Affordability. For-Sale Inclusionary Units shall be deed restricted pursuant to this Chapter for a period not less than 45 years. Rental Inclusionary Units shall be deed restricted pursuant to this Chapter for a period not less than 55 years.
- B. Design. The following requirements shall apply:
 - (1) Inclusionary Units should be reasonably dispersed throughout the entirety of the Residential Development.
 - (2) Inclusionary Units should be comparable in terms of bedroom count to the Market-Rate units, excluding ADUs. However, on-site Rental Units may be up to 20% smaller than the Market-Rate Units in the Residential Development project and on-site For-Sale Units may be up to 30% smaller than the Market-Rate Units in the Residential Development.
 - (3) The exterior design and character of the Inclusionary Units shall be substantially consistent with that of the Market-Rate Units in the Residential Development.
 - (4) Interior Finishes. Inclusionary Units may have different interior finishes than Market Rate units so long as the interior finishes are durable, of good quality and consistent with current State building code standards for new housing.
 - (5) The Inclusionary Units must have access to all Amenities available to the Market-Rate Units.
- C. Timing. Inclusionary Units must be constructed prior to or concurrently with the construction of the Market-Rate Units. In the event the Town approves a phased project, the Inclusionary Units required by this Chapter shall be constructed and occupied in proportion to the number of units in each phase of the Residential Development. In no case shall an Affordable Housing Unit be the final Dwelling Unit issued a Certificate of Occupancy of a Residential Development or its approved phase(s).
- D. Segmentation. Segmentation of a project to avoid the requirements of this Chapter is not permitted. Construction of proximate Dwelling Units within any five-year period for which there is evidence of common ownership, control or interest, whether or not covered by the same land use entitlements, shall be subject to the regulations of this Chapter. However, nothing herein shall prohibit the phased development of a project, as approved by the Town.

8.180.080 Incentives

The Town shall make available to the Applicant Incentives to increase the feasibility of Residential Developments to provide Inclusionary Units. These Incentives shall only be available to Applicants who construct the Inclusionary Units on-site:

- A. Fee Deferral. The Town Council, by resolution, may defer payment of Town of Moraga development impact fees (e.g. General Government, Public Safety, Park Development, Storm Drain, Parkland Development, the Lamorinda Fee and Finance Authority Fee,

etc.) applicable to the Residential Development of which they are a part. Development impact fees for each unit shall be paid no later than the time of transfer of the unit to the first occupant, or at the time a certificate of occupancy is issued for Rental Units. The Developer and Town shall enter into a fee deferral agreement to be recorded against the real property prior to building permit issuance that restricts the transfer of any Dwelling Unit until all development fees for that parcel have been paid in full.

- B. Incentives. Density bonuses and reduced parking requirements shall be available to projects meeting the requirements of this Chapter by providing Inclusionary Units on-site, in accordance with a schedule of Incentives to be adopted through a Moraga Affordable Housing Incentive Policy Resolution by the Town. Incentives shall be consistent with and may exceed the concessions and waivers available through State Density Bonus Law. Such Incentives may include but are not limited to:

- (1) Increased height/stories
- (2) Reduced setbacks or stepbacks
- (3) Reduced private open space requirements
- (4) Increased floor area ratio, where applicable
- (5) Increased lot coverage

8.180.090 Accessory Dwelling Unit (ADU) Alternative Means of Compliance

As indicated in Section 8.180.040(B)(2), an Applicant constructing a For-Sale Residential Development in any zoning district with densities equivalent to R-6 or lower may fulfill a development's inclusionary housing requirements with the development of Accessory Dwelling Units, as set forth in this section.

- A. Applicability. The provisions of this section shall apply to all new For-Sale Residential Developments with six or more units in the RR, R-1 DUA, R-2 DUA, R-3 DUA, and R-6 zoning districts.
- B. Scope. Developers shall include Accessory Dwelling Units (ADUs) in a minimum of 25 percent of all primary units in the Residential Development. Such ADUs shall be at least 500 square feet in floor area, or no less than the maximum allowable size of Junior ADUs established by State law, whichever is less. Junior Accessory Dwelling Units (Junior ADUs) shall be ineligible to meet this requirement. In the event the number of required ADUs is not a whole number, the number of units shall be rounded up to the nearest whole number regardless of the fractional amount. No restrictions on occupancy or the income of occupants shall be required.
- C. Ineligibility for Density Bonus. Developers providing ADUs as provided in this Section to meet their affordable housing requirements shall be ineligible for density bonuses or Incentives.
- D. Design Parameters. Any ADUs constructed pursuant to this Section shall meet the design and development standards at Chapter 8.124 of the Municipal Code (Accessory Dwelling Units).

- E. Reporting. The Town may, from time to time, request that the owner of each unit ADU subject to this Section report the occupancy status of the ADU using a Town-supplied reporting form.

8.180.100 Waivers

- A. The requirements of this Chapter may be waived, adjusted, or reduced if a Developer shows, based on substantial evidence, that there is no reasonable relationship between the impact of a proposed Residential Development and the requirements of this Chapter, or that applying the requirements of this Chapter would take property in violation of the United States or California Constitutions.
- B. Any request for a waiver, adjustment, or reduction under this section shall be submitted to the Town concurrently with the Affordable Housing Plan required by Section 8.180.050(B). The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim.
- C. The request for a waiver, adjustment, or reduction shall be reviewed and considered in the same manner and at the same time as the Affordable Housing Plan.
- D. In making a determination on an application for waiver, adjustment, or reduction, the Developer shall bear the burden of presenting substantial evidence to support the claim. The waiver, adjustment or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this section.

8.180.110 Enforcement

- A. Applicability. The provisions of this Chapter shall apply to all agents, successors and assigns of an Applicant.
- B. Enforcing Authority. The Town Manager or their designee is the enforcing authority for this Chapter. The Town Manager may suspend or revoke any building permit or approval upon finding a violation of any provision of this Chapter.
- C. Excessive Sales Price and Rents/Legal Action. It is unlawful, a public nuisance and a misdemeanor for any person to sell or rent an Inclusionary Unit at a price or rent exceeding the maximum allowed under this Chapter or to a household not qualified under this Chapter. If the Town determines that the sales price or rents in excess of those allowed by operation of this Chapter have been charged to a household residing in an affordable unit, the Town may take appropriate legal action.

SECTION 3. Effective Date. This Ordinance becomes effective thirty (30) days after its final passage and adoption.

SECTION 4. 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.

SECTION 6. Publication. The Town Clerk shall cause this Ordinance to be published in accordance with State law.

The foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Moraga, California, held on December 7, 2022, and was adopted and ordered published at a regular meeting of the Town Council held on December 14, 2022 by the following vote:

Ayes:
Noes:
Abstain:
Absent:
Recused:

Steve Woehleke, Mayor

ATTEST:

Yashin Abbas, Interim Town Clerk

ATTACHMENT B

Draft Development Incentives Policy Resolution for Projects
Meeting the Town's Affordable Housing Requirements On-Site

Development Incentives Policy

Developers meeting the Town's affordable housing requirements on-site shall be eligible for the density bonuses listed below. Developers meeting the requirements through an Alternative means of compliance as defined in Section 8.180.060 of the Moraga Municipal Code shall not be eligible for local bonuses. Projects with five units or fewer shall likewise be ineligible for local bonuses.

State Density Bonus Law (SDBL) requires that projects receiving low-income housing density bonuses must be affordable to households earning 60 percent of Areawide Median Income (AMI) or lower. As an incentive, the Town of Moraga will award equivalent density bonuses for projects serving households earning 80 percent of AMI or less. In addition, the Town will offer a supplemental **local** density bonus which may be added to the State bonus for projects providing on-site inclusionary units. The tables below represent the aggregate of the State Density Bonus and an additional Town of Moraga bonus for various housing types. As the table indicates, higher bonuses are provided for housing types identified in the 2023-2031 Housing Element as being particularly important to the Town.

R-24 Zoning District:

Housing Type	Base Density (General Plan and Zoning)	State Density Bonus Available to Projects providing 10% low income (*)	State Density Bonus Available to Projects providing 10% moderate(*)	Town of Moraga Supplemental Bonus for Projects meeting the inclusionary requirement on-site	Total Bonus	Allowable Density with Local Bonus
Rental Housing, General	24 DUA	20%	N/A	5%	25%	30 DUA
Rental Housing, Senior	30 DUA	20%	N/A	N/A (**)	20%	36 DUA
Rental Housing, Student	24 DUA	35%	N/A	15%	50%	36 DUA
For-Sale Housing, Senior	30 DUA	N/A	15%	5%	20%	36 DUA

DUA= Dwelling Units Per Acre

MSCP MU-RR, MSCP MU-OR zoning districts, and for the Rheem Center Commercial/Residential (RM-CR), and Rheem Center Office/Residential (RM-OR) zoning districts once established:

Housing Type	Base Density (General Plan and Zoning)	State Density Bonus Available to Projects providing 10% low income (*)	State Density Bonus Available to Projects providing 10% moderate(*)	Town of Moraga Supplemental Bonus for Projects meeting the inclusionary requirement on-site	Total Bonus	Allowable Density with Local Bonus
Rental Housing, General	24 DUA	20%	N/A	5%	25%	30 DUA
Rental Housing, Senior	24 DUA	20%	N/A	30%	50%	36 DUA
Rental Housing, Student	24 DUA	35%	N/A	15%	50%	36 DUA
For-Sale Housing, Senior	24 DUA	N/A	15%	35%	50%	36 DUA

DUA= Dwelling Units Per Acre

R-20 Zoning District:

Housing Type	Base Density (General Plan and Zoning)	State Density Bonus Available to Projects providing 10% low income (*)	State Density Bonus Available to Projects providing 10% moderate(*)	Town of Moraga Supplemental Bonus for Projects meeting the inclusionary requirement on-site	Total Bonus	Allowable Density with Local Bonus
Rental Housing, General	20 DUA	20%	N/A	5%	25%	25 DUA
Rental Housing, Senior	30 DUA	20%	N/A	N/A (**)	20%	36 DUA
Rental Housing, Student	20 DUA	35%	N/A	15%	50%	30 DUA
For-Sale Housing, Senior	30 DUA	N/A	15%	5%	20%	36 DUA

R-12 Zoning District:

Housing Type	Base Density (General Plan and Zoning)	State Density Bonus Available to Projects providing 10% low income (*)	State Density Bonus Available to Projects providing 10% moderate(*)	Town of Moraga Supplemental Bonus for Projects meeting the inclusionary requirement on-site	Total Bonus	Allowable Density with Local Bonus
Rental Housing, General	12 DUA	20%	N/A	5%	25%	15 DUA
Rental Housing, Senior	12 DUA	20%	N/A	5%	25%	15 DUA
Rental Housing, Student	12 DUA	35%	N/A	0%	35%	16 DUA
For-Sale Housing, Senior	12 DUA	N/A	15%	10%	25%	15 DUA

MCSP R-6 Zoning District:

Housing Type	Base Density (General Plan and Zoning)	State Density Bonus Available to Projects providing 10% low income (*)	State Density Bonus Available to Projects providing 10% moderate(*)	Town of Moraga Supplemental Bonus for Projects meeting the inclusionary requirement on-site	Total Bonus	Allowable Density with Local Bonus
Rental Housing, General	6 DUA	20%	N/A	13.4%	33.4%	8 DUA
Rental Housing, Senior	6 DUA	20%	N/A	13.4%	33.4%	8 DUA
Rental Housing, Student	6 DUA	35%	N/A	0%	35%	8 DUA
For-Sale Housing, Senior	6 DUA	N/A	15%	18.4%	33.4%	8 DUA

(*) For the purposes of these tables, low-income is defined as 80% of AMI and moderate-income is defined as 120% of AMI, adjusted for household size.

(**) For senior housing in the R-20 and R24 zoning districts, the Town's zoning already establishes a base density of 30 DUA, which is higher than the density allowed for other housing types. Thus, a supplemental local bonus is not provided for senior housing. Such projects may use the State Density Bonus of 20 percent to achieve 36 DUA.

Parking

In addition to the density bonus, such projects shall be entitled to use State Density Bonus parking requirements for lower income housing for projects serving households up to 80 % of AMI, rather than the 60% AMI required by the State. The parking requirements are:

- Studio and One-Bedroom: 1 space
- Two or Three Bedrooms: 1.5 space
- Four Bedrooms: 2.5 spaces

Concession or Incentive

Consistent with State Density Bonus Law, applicants who meet the 10% affordable housing requirement on-site are also automatically eligible for one concession or incentive. Only one incentive may be requested unless deeper levels of affordability are provided. Developers seeking relief from other development standards may request waivers as allowed by State Density Bonus Law.

Examples of desired incentives include but are not limited to:

- (1) Increased height/ stories
- (2) Reduced setbacks or stepbacks
- (3) Reduced private open space requirements
- (4) Increased floor area ratio, where applicable
- (5) Increased lot coverage