

## BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the matter of:

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

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**ORDINANCE NO. 303**

**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.12-2022, 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 or 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. Rental 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) As an alternative to the requirement above, Developers of For-Sale projects in zoning districts of R-6 densities or lower may meet the Inclusionary Unit requirement by including Accessory Dwelling Units in at least 25 percent of the 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 8.180.090); 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 400 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 5.** 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:** Mayor Woehleke, Vice Mayor Sos, Councilmembers Makker,  
McCluer and Onoda  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** None

AFFIRMED:

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Steve Woehleke, Mayor

ATTEST:

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Yashin Abbas, Interim Town Clerk