

**BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA**

**In the matter of:**

**Amending Various Chapters and )  
Sections of Title 8, Planning and )  
Zoning, of the Town of Moraga )  
Municipal Code, Including: )  
1) Retitling and Amending Chapter )  
8.20 to Clarify and Incorporate )  
Regulations for Nonconforming Uses, )  
Structures and Lots )  
Combining the Regulations for the )  
One Dwelling Unit Per Acre Land Use )  
District (Chapter 8.24); and the Two and )  
Three Dwelling Unit Per Acre )  
Residential District (Chapter 8.28) into a )  
Single Chapter 8.24; and Retitling )  
Chapter 8.24 accordingly )  
3) Adding a New Chapter, Chapter )  
8.70-Accessory Structures and )  
Buildings, and reorganizing and )  
incorporating various amendments to )  
existing regulations including Section )  
§8.28.030-Minimum area and yard )  
regulations and Chapter 8.68-Lot Size, )  
Yard, and Setback Requirements into )  
this Chapter )  
4) Amending Section §8.04.020 to )  
Clarify and Incorporate Additional )  
Definitions pertaining to the Above- )  
Referenced Chapters and Sections; and )  
Amending the Definition of “Family” as )  
it Relates to Residential Land Use in )  
Accordance with State Law )**

**ORDINANCE NO. 268**

**WHEREAS**, the Town of Moraga incorporated on November 12, 1974; and

**WHEREAS**, the Town of Moraga continued to use the zoning regulations in the Contra Costa County Code for a period of time following the Town’s incorporation; and

**WHEREAS**, the Town’s Zoning Ordinance was adopted on October 8, 1980 as Title 8 of the Moraga Municipal Code, and became effective on November 7, 1980; and

**WHEREAS**, the Town’s Zoning Ordinance has not been comprehensively updated or amended since its enactment in November 1980; and

**WHEREAS**, over time, the existing regulations in certain sections of the Zoning Ordinance have sometimes raised questions or revealed difficulties in interpreting how such regulations should be applied to projects under review, in particular those sections related to nonconforming uses, and accessory structures and buildings; and

**WHEREAS**, the zoning regulations for the One, Two and Three Dwelling Units per Acre Residential Districts are currently contained in two separate chapters of Title 8 – Chapter 8.24 and Chapter 8.28; and

**WHEREAS**, the One, Two and Three Dwelling Units per Acre Residential Districts are similar in terms of purpose and overall character, with variations in the applicable development standards such as lot area and setbacks, such that combining the regulations for these three zones into a single chapter would be clearer and would eliminate redundancy and potential confusion; and

**WHEREAS**, the Town’s updated Housing Element for 2015-2023 was adopted in January 2015 and certified by the State of California in February 2015; and

**WHEREAS**, the 2015-2023 Housing Element includes an implementation action to amend the definition of “family” in the Town’s zoning ordinance to include households with more than five unrelated individuals living together as a single housekeeping unit, in order to make this definition consistent with that which is used in State law; and

**WHEREAS**, the Planning Department’s work program for 2016 included an item to develop and consider for adoption a series of targeted amendments to the Zoning Ordinance, Title 8 of the Moraga Municipal Code (MMC), in order to improve clarity and specificity of the aforementioned sections of the zoning regulations; and

**WHEREAS**, the Planning Commission held a study session on September 6, 2016 at which the Commission heard public testimony and reviewed and provided feedback on the proposed Zoning Ordinance amendments; and

**WHEREAS**, on October 3, 2016, the Planning Commission held a duly noticed public hearing, took public testimony on the proposed amendments to Title 8, Planning and Zoning, of the Moraga Municipal Code, and after providing additional feedback and suggested revisions to the proposed Zoning Ordinance amendments, continued the public hearing to a date uncertain; and

**WHEREAS**, on January 9, 2017, the Planning Commission held a duly noticed public hearing and took public testimony on the proposed amendments to Title 8, Planning and Zoning, of the Moraga Municipal Code, and adopted Resolution No. 3-2017 recommending Town Council approval of an ordinance adopting the proposed amendments; and

**WHEREAS**, on February 22, the Town Council held a duly noticed public hearing, took testimony on the proposed amendments to various chapters and sections of Title 8, Planning and Zoning, of the Moraga Municipal Code, and considered the text of the proposed amendments, and, after deliberation, continued the public hearing to a date

certain of April 12, 2017, at which meeting the Town Council considered an amended draft of the Ordinance, and after further testimony and deliberation, continued the public hearing to a date certain of April 26, 2017.

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

**SECTION 1:** The Town Council hereby finds as follows:

A. The Town Council considered the proposed ordinance, took testimony from members of the public, and hereby finds that the ordinance is in compliance with the Moraga General Plan, there is a community need for the ordinance, and the ordinance conforms with public convenience, general welfare, and good zoning practice.

B. Adoption of this ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section §15061(b)(3): General Rule Exemption, §15301 (Existing Facilities), §15303 (New Construction or Conversion of Small Structures), and §15311 (Accessory Structures), since the proposed regulations are either clarifying existing rules, or allowing small projects such as accessory structures that are categorically exempt under CEQA. Therefore it can be seen with certainty that the activity will not have a significant effect on the environment.

**SECTION 2:** Moraga Municipal Code Section 8.04.020 – Definitions is deleted in its entirety and replaced with the following:

**8.04.020 - Definitions.**

The definitions in this section govern the construction of this title unless the context otherwise requires:

"Accessory building is a subordinate detached building the use of which is incidental to that of a primary building on the same lot. Examples of accessory buildings include, but are not necessarily limited to, a garage, carport, guesthouse, greenhouse, poolhouse, playhouse, and shed.

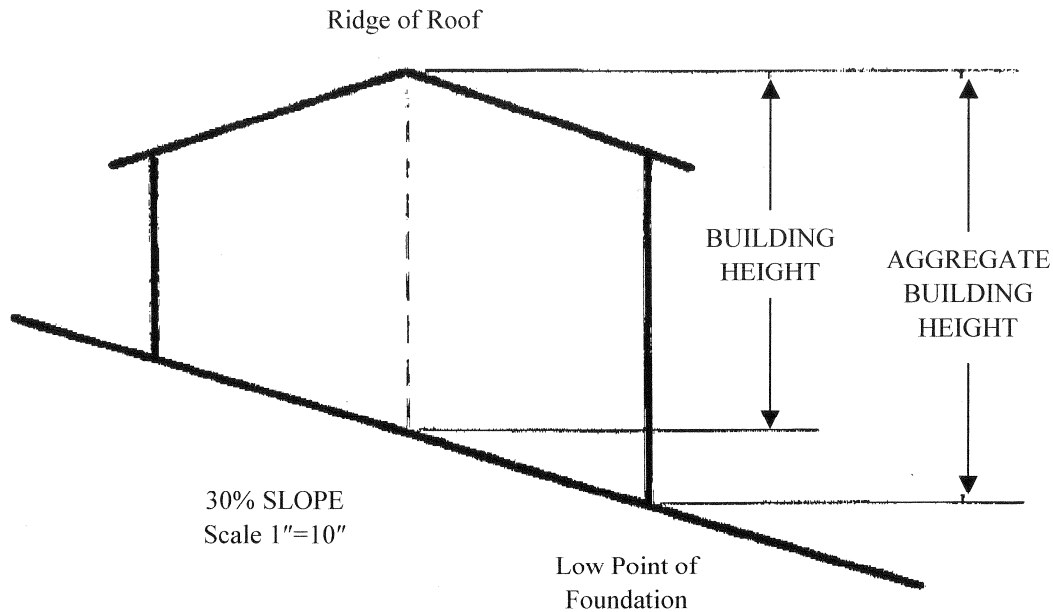
"Accessory structure" is a subordinate structure the use of which is incidental to that of a primary building or structure on the same lot. Examples of accessory structures include, but are not limited to, a shipping container, pergola, arbor, trellis, patio cover, outdoor kitchen, deck, and cistern.

"Accessory use" is a use incidental and accessory to the primary use of a lot, or a use accessory to the primary use of a building located on the same lot.

"Aggregate building height" applies to structures on sloped lots where the structure is stepped down the slope and the height is measured from the highest point of the roof or parapet wall to the lowest point of the foundation at the approved grade.

"Agriculture" means the tilling of soil, the raising of crops, horticulture, dairying, and the raising and managing of livestock.

## EXAMPLES OF BUILDING HEIGHT



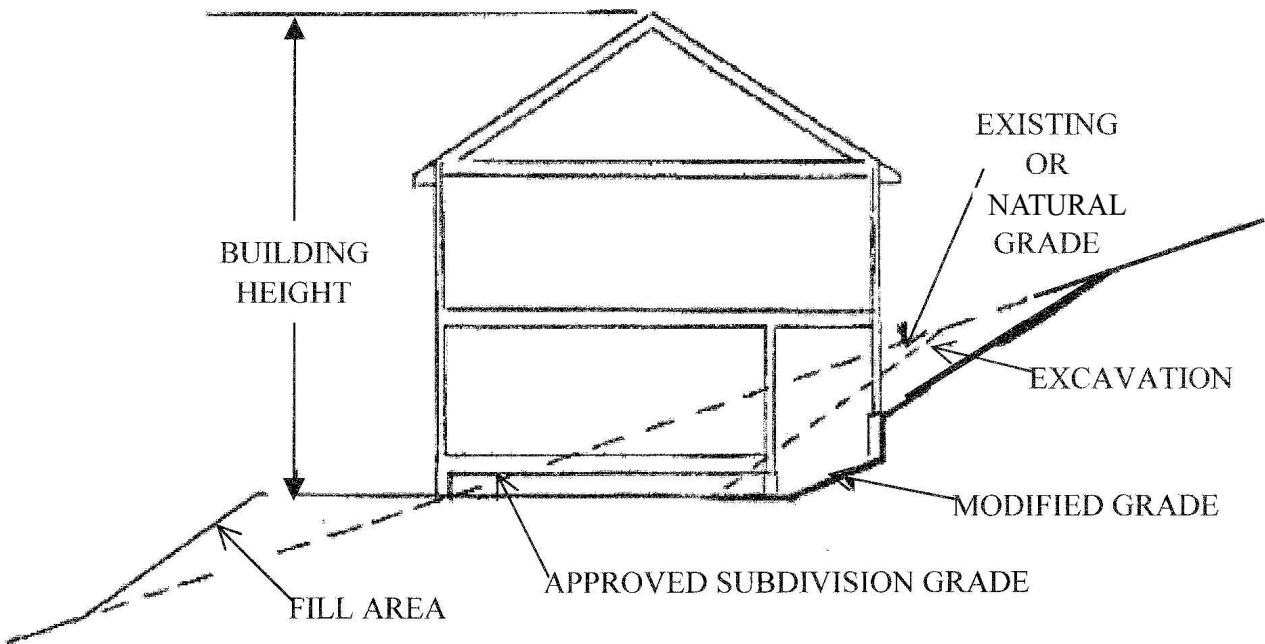
"Attic" is that space of the building above a story and which is not habitable and may be utilized for storage. The space must be unconditioned.

"Average lot width" is the total area of the lot divided by the depth of the lot.

"Basement" is that portion of a building between the floor and ceiling or finished floor level directly above, which is partly below and partly above finished ground surface or all below finished ground surface. If the height between the ceiling and the finished ground surface adjoining the exterior walls exceeds six feet at any point or if it is utilized as a habitable space/room, the space shall be considered a story.

"Building" is an enclosed or substantially enclosed structure with a roof supported by columns or walls or both and intended for the shelter, housing or enclosure of persons, animals or chattels.

"Building height" is the vertical distance measured between any point of the roof or parapet walls and the existing grade, approved subdivision grade or approved modified grade directly beneath.



"Carport" is any building, whether temporary or permanent, located outside a building or attached or contiguous thereto, wholly or partly covered by a roof and having one or more open sides, used for the shelter of parked vehicles.

"CEQA" means California Environmental Quality Act.

"Commercial dog kennel" means a premises where one or more dogs are kept and maintained for commercial purpose, including boarding, breeding, and veterinary care.

"Clustered units" are defined as units sited on lots less than ten thousand (10,000) square feet in area; provided that no more than three units are attached as a building group.

"Court" is an area enclosed or partially enclosed by two or more walls on the same lot, and which is open and unobstructed from the ground upward to the sky.

"Day," as used in this title, is defined as a calendar day.

"Deck" is an outdoor platform typically made of lumber, wholly or partially supported from the ground below or cantilevered from a building, typically surrounded or enclosed by a railing, balustrade, or parapet. A deck may be freestanding or attached to a building or structure.

"Depth of a lot" is the distance perpendicular to the frontage to the point of the lot farthest from the frontage.

"Dog fancier" is a person owning or keeping three or more dogs over the age of six months whether as pets or for any other purpose or use.

"Drive-in service" means a feature or characteristic of a use involving the sale of products or the provision of services to an occupant in a vehicle and includes a drive-in or drive-up window or a drive-through service, such as mechanical automobile washing.

"Duplex" is a detached building designed for occupancy as the residence of two families living independently of each other.

"Emergency shelter" means housing with minimal supportive services that is designed for and occupied by homeless persons for no more than six months in a consecutive 12-month period.

"Family" means: (1) Two or more persons related by birth, marriage, or adoption, or (2) An individual or a group of persons living together who constitute a bona fide housekeeping unit in a dwelling unit, not including a fraternity, sorority, club, or other group of persons occupying a hotel, lodging house, or institution of any kind.

"Fence" or "wall" is a barrier of any material or combination of materials constructed to enclose or screen areas of land. The fence or wall height shall be measured from the highest point of the fence or wall to the lowest point of the finished grade directly beneath the highest point.

"Frontage" of a lot means the distance measured between the two points on the principal road, street or access that are farthest apart.

"Garage" means a fully enclosed building, or part thereof, used or designed to be used for the parking and/or storage of vehicles.

"Greenhouse" means an accessory building with a roof constructed primarily of glass, plastic, or similar transparent or semi-transparent material which is devoted to the cultivation and/or protection of plants.

"Habitable space/room" is a space/room in a structure used for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas are not considered habitable space/room.

"Home occupation" is an activity conducted by a person at one's principal place of residence as a means of livelihood or in expectation of profit.

"Landscaping" consists of the following unless specifically noted to the contrary:

Walks, fences, retaining walls, ground level steps, terraces, surface drainage necessary for landscape development, irrigation (lawn and hose bib systems), pools, fountains, recreation areas, garden lighting; rough grading, excavation, filling and fine grading required for preparation of an area for planting; and general planting (lawns, shrubs, trees and ground covers). Roads, parking areas, driveways, general site drainage, fire hydrants, public sidewalks and public utility items are not landscaping.

"Livestock" includes horses, cattle, sheep, goats, turkeys, ostrich, emu, and other domestic farm animals, but excludes small farm animals as defined in Section 8.92.020.

"Lot" is a parcel or area of land having an area not less than the minimum area required by the title for a building site in the district in which the lot is located. In computing the area of a lot, those portions lying within the exterior boundaries of an existing or proposed public road, street, highway, right-of-way, or easement owned, dedicated or

used for purposes of vehicular or pedestrian access are not included to determine minimum area, yard or dimensional requirements.

"Multifamily structure" is a building designed and used exclusively as a dwelling by three or more families occupying separate suites or apartments.

"Modified grade" is the grade other than the grade established by an approved subdivision. Modified grade shall be approved by the reviewing body. Excavation entirely within the footprint of the building shall not be considered as a modified grade for the purpose of determining building height.

"Pergola" means a structure usually consisting of parallel colonnades supporting an open roof of girders and cross rafters.

"Playhouse" means a stand-alone enclosed or substantially enclosed structure, containing unfinished space, with a roof supported by columns or walls and used or intended to be used by children to play in.

"Retail business" is the sale of retail goods, wares, merchandise, services and other personal or real property, but does not include nightclub, discotheque or massage parlor. Unless otherwise indicated, retail business includes business and professional offices.

"Setback" is the minimum required distance from a lot line, measured perpendicularly to the lot line, to the nearest portion of a structure on the lot (except for the facilities and encroachments included in Section 8.68.060) as set forth in the development standards for the zoning district applicable to the lot. *See definition of "Yard."*

"Shed" means an unconditioned accessory building used for garden and/or household storage.

"Shipping Container" is a standardized, reusable vessel generally constructed of metal, which was originally, specifically or formerly designed for or used in the packing, shipping, or movement of freight, articles, goods or commodities by commercial trucks, trains and/or ships by means of being mounted on a chassis or similar transport device. A shipping container that has been modified in a manner that would preclude future use by a commercial transportation entity shall be considered a shipping container for purpose of this article. A shipping container includes containers commonly referred to as a "storage container" or "cargo container."

"Single-family dwelling" means a detached building or part of it designed for occupancy as the residence of one family.

"Story" is that portion of a building included between the surface of any floor and the surface of any floor next above it. If there is no floor above it, then the space between such floor and the ceiling next above it shall be considered a story. A basement or garage shall be counted as a story if it is over six feet above the finished ground surface adjoining the exterior walls of such story at any point or if it is used as a habitable space/room.

"Structure" means anything constructed or erected that has location on the ground, or is attached to something having location on or in the ground.

"Supportive housing" means housing with no limit on length of stay, that is occupied by a target population and that is linked to on-site or off-site services that assist the supportive housing resident in retaining the housing, improving his or her health status,

and maximizing his or her ability to live and, when possible, work in the community. Supportive housing units are residential uses subject only to those requirements and restrictions that apply to other residential uses of the same type allowed in the district.

"Transitional housing" means rental housing operated under program requirements that call for the termination of assistance and recirculation of the assisted unit to another eligible program recipient at some predetermined future point in time, which shall be no less than six months, and in no case more than two years. Transitional housing units are residential uses subject only to those requirements and restrictions that apply to other residential uses of the same type allowed in the district.

"Trellis" means a framework, usually made from lattice or wire, used as a screen or support for climbing plants.

"Unfinished space" means enclosed space within a building, usually a basement or attic, that has one or more of the following characteristics: does not have heating, ventilation or plumbing; may not have insulation, drywall, or a finished floor; and may be used for storage, but is not intended to be used for living, sleeping, eating, cooking, or bathing.

"Yard" means an area within a lot, adjoining a lot line and measured horizontally and perpendicular to the lot line for a specified distance, that is open and unobstructed to the sky, except for activities, facilities and encroachments otherwise allowed by this title. A minimum yard is the minimum required distance from a lot line, measured perpendicularly to the lot line, to the nearest portion of a structure on the lot (except for the facilities and encroachments included in Section 8.68.060) as set forth in the development standards for the zoning district applicable to the lot; *also referred to as "Setback."*

"Yard, Exterior Side." "Exterior side yard" means the area of a corner lot fronting on a public or private street that extends from the front yard to the rear yard between the exterior side lot line and the nearest wall of a building on the lot, and for purposes of the minimum exterior side yard setback requirement, it is measured perpendicular from the exterior side lot line to the nearest point on the nearest wall of a building on the lot.

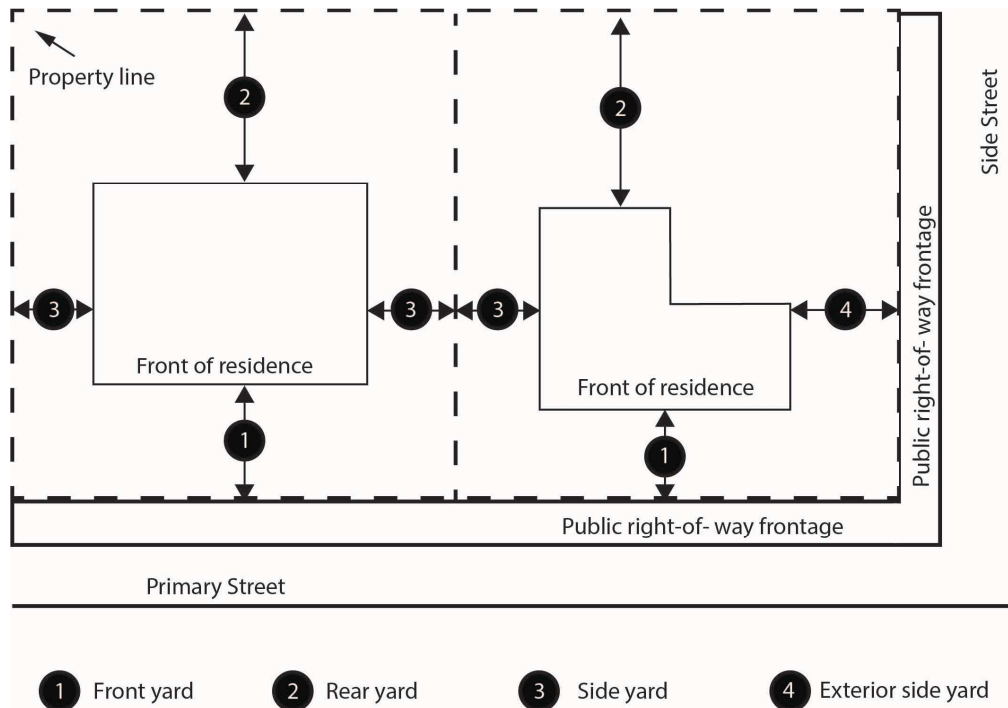
"Yard, Front." "Front yard" means the area of a lot extending across the full width of the lot and for purposes of the minimum front yard setback requirement, it is measured perpendicular from the front lot line to the nearest point on the nearest wall of a building on the lot.

"Yard, Rear." "Rear yard" means the area of a lot extending across the full width of the lot and for purposes of the minimum rear yard setback requirement, it is measured perpendicular from the rear lot line to the nearest point on the nearest wall of a building on the lot.

"Yard, Side." "Side yard" means the area of a lot extending from the front yard to the rear yard, and for purposes of the minimum side yard setback requirement, it is measured perpendicular from the side lot line to the nearest point on the nearest wall of a building on the lot.



**Figure 8.04.020-01: Yards**



**SECTION 3:** Moraga Municipal Code Chapter 8.20 – Nonconforming Uses is deleted in its entirety and replaced with the following:

## **Chapter 8.20 - NONCONFORMING USES, STRUCTURES AND LOTS**

### **Sections:**

#### **8.20.010 – Purpose.**

The purpose of this chapter is to generally permit uses and structures which do not conform to the current zoning regulations to continue in their existing form, while allowing for reasonable improvements and maintenance, and limiting the extent to which they may be expanded, enlarged, or replaced.

#### **8.20.020 – Definitions.**

##### **A. Nonconforming use**

A “nonconforming use” is a use lawfully occupying a structure or a site that does not conform with the current use regulations or required conditions for the zoning district in which it is located.

##### **B. Nonconforming structure/building**

A “nonconforming structure” or “nonconforming building” is one which was lawfully permitted at the time it was constructed, but which does not conform with one or more

of the current zoning standards and regulations for the district in which it is located. The definition of a “nonconforming structure” includes a “nonconforming building.”

C. Nonconforming lot

A “nonconforming lot” is one that was lawfully subdivided or established, but that does not conform with the current minimum lot area, width or depth requirements as prescribed in the regulations for the zoning district in which it is located.

**8.20.030 - Rezoning or changes in district boundaries.**

When the Town changes the boundaries of a land use district, rezones an area from one land use district to another, or modifies zoning standards or regulations, this chapter applies to a nonconforming use, structure/building, or lot created by the change in boundaries, change in land use district classification or modification of zoning standards or regulations.

**8.20.040 – Right to continue.**

Except as otherwise specified in this chapter, a nonconforming use, building, structure or lot, which is in existence on the effective date of this title, or of any subsequent rezoning or other amendment thereto, which makes such use, structure, building or lot nonconforming, and which existed lawfully under the previous zoning ordinances, may thereafter be continued and maintained indefinitely, and the rights to such use shall run with the land.

**8.20.050 – Regulations governing nonconforming uses.**

A. Limitations on expansion or intensification of a nonconforming use

A nonconforming use may not be extended to occupy a greater area, increased in intensity, changed to a different nonconforming use, or altered in any other manner that increases the degree of nonconformity of the use.

B. Limitations on a conforming building or structure occupied by a nonconforming use

When a structure that conforms with the applicable regulations for the zoning district in which it is located is occupied by a nonconforming use, the structure may not be enlarged, altered or moved, unless such modification will not increase the degree of nonconformity of the use.

C. Discontinuance or abandonment of a nonconforming use

(1) Whenever a nonconforming use is discontinued or abandoned for a continuous period of 180 days or more, such use may not be resumed and all future use of the structure or premises must thereafter conform to the use regulations of the zoning district in which it is located.

(2) The Planning Director shall determine discontinuance based on evidence including the removal of equipment, furniture, machinery, structures, or other components of the nonconforming use; disconnected or discontinued utilities; or the lack of business records to document continued operation.

D. Revocation of a nonconforming use

(1) The Planning Commission may revoke the right to continue a nonconforming use if it makes all of the following findings, based on the facts presented at a public hearing:

- a) That the use is being or has been exercised so as to be detrimental to the public health, safety or welfare, or so as to constitute a nuisance, hazard or detriment to the surrounding properties, neighborhood, or the town in general; and
- b) That terminating the nonconforming use would not impair the constitutional rights of the owner or occupant.

If the Planning Commission finds that such grounds for revocation exist, it may revoke its continuance.

(2) Revocation procedures, including notice, hearing, decision and appeal shall be in accordance with the provisions specified in Chapter 8.12.

E. Change of use of a building or structure that is nonconforming solely with respect to parking

When the use of a property is nonconforming solely with respect to required parking, a new use may be established within a building or structure on that property provided that the minimum parking requirement for the proposed use, as set forth in Section 8.76.090, is equal to or less than the minimum parking requirement for the previous use.

**8.20.060 – Regulations governing nonconforming structures.**

A. Repairs and maintenance permitted

The routine maintenance, repair, or painting of a nonconforming structure shall be permitted, provided that these improvements do not substantially alter the structure to create any new nonconformity or increase the degree of any existing nonconformity that applies to the structure.

B. Limitations on alterations, expansion or enlargement

Except as provided in subsection (C), a nonconforming structure may not be altered, enlarged, or reconstructed in any way that increases the degree of nonconformity related to the development standards for the zoning district in which it is located, including but not limited to setbacks; height; distances between structures; or usable open space, unless such alteration is permitted by a variance approved pursuant to Chapter 8.16 and Section 8.12.130.

C. Exceptions to limitations on alterations, expansion or enlargement

(1) Alterations for seismic safety, State Building Code Compliance, or ADA access facilities

Alterations, reconstruction, or repairs may be performed on a nonconforming structure without a variance as follows:

- a) for the purpose of improving seismic safety or to comply with California Building Standards Code requirements, provided that the work does not change the structure's footprint or height; or

- b) to provide accessible facilities in compliance with the Americans with Disabilities Act (ADA). See also Chapter 8.168 – Reasonable Accommodation.

(2) Residential Additions – Nonconforming Setbacks

- a) The provisions of Section 8.68.050 – Front and side yard setbacks established under County zoning shall apply to proposed additions to single family residences that were constructed prior to November 7, 1980 and are located in areas formerly designated as R-10, R-15 and R-20 zones under County zoning regulations in effect at the time of construction.
- b) For existing residential buildings that do not conform with current setback requirements, but are not eligible to apply the provisions of Section 8.68.050, when an addition is proposed to the existing residential building, continuation of exterior walls that do not conform with current setback requirements may be allowed without a variance, provided that all of the following criteria are met:
  - i. The total floor area of any such addition is 20% or less of the floor area of the existing building prior to its expansion; except that this maximum area allowed without a variance may be reduced by the reviewing authority based on site-specific factors pursuant to the design review process in Chapter 8.72;
  - ii. The total floor area of the resulting structure does not exceed the allowable floor area ratio (FAR) under the Town of Moraga Design Guidelines;
  - iii. Only a maximum of 30 linear feet may be added to the exterior wall of a first habitable floor or level that does not conform with current setback requirements without a variance; except that this maximum may be reduced by the reviewing authority based on site-specific factors pursuant to the design review process in Chapter 8.72. Foundation or skirt walls enclosing non-habitable space directly beneath the area of the first habitable floor being extended may be extended in a similar manner to that permitted for the habitable floor above.
  - iv. No new nonconformity will be created and no other existing nonconformity will be increased, beyond that related to an addition permissible pursuant to subsection i) above;
  - v. Only one addition per building shall be permitted under the provisions of this section; and
  - vi. Approval of a second story addition directly over an addition permitted under the provisions of this section may only be permitted subject to approval of a variance.

(3) Attached Decks – Nonconforming Setbacks

- a) For existing residential buildings that do not conform with current setback requirements, but are not eligible to apply the provisions of Section 8.68.050, when a new attached deck or expansion of an existing attached deck is proposed, the footprint of the deck may continue the line of existing exterior building walls without requiring a variance, provided that:
  - i. For a new attached deck, the area of the deck is 120 square feet or less; except that this maximum area allowed without a variance may be reduced, including to the point of barring any such construction, by the

reviewing authority based on site-specific factors pursuant to the design review process in Chapter 8.72.

- ii. For an expansion of an existing attached deck, the additional deck area does not exceed 120 square feet or 50% of the area of the existing deck, whichever is less; except that this maximum area allowed without a variance may be reduced, including to the point of barring any such expansion by the reviewing authority based on site-specific factors pursuant to the design review process in Chapter 8.72.
- iii. Only one new deck or expansion of an existing deck per building shall be permitted under the provisions of this section.
- b) For construction or expansion of a new deck located below an existing, legally constructed upper story deck that does not conform with current setback requirements, such construction or expansion shall be allowed without a variance, provided that the requirements of paragraph (a) above are satisfied and the footprint of the new deck does not extend beyond the footprint of the existing upper story deck.
- c) An open, uncovered deck twenty-four (24) inches or less above existing grade shall be subject to the provisions of Section 8.70.040.A.

(4) Attic and Basement Conversion

The conversion of existing unfinished space to new habitable space in an attic or basement which is fully contained within the existing building envelope of any nonconforming residential building shall not require a variance. Such conversions shall continue to be subject to all applicable provisions of Chapter 8.72 – Design Review, including but not limited to the Design Guidelines provisions related to maximum Floor Area Ratio and the provisions that discourage placement of more than two two-story homes in a row. Such conversions shall also comply with Policy LU1.3 of the Moraga General Plan.

D. Damage or destruction – Right to rebuild

In the event that a nonconforming building or structure is involuntarily damaged or destroyed by a natural force or accident, such as an earthquake, flood or fire, the structure may be restored or reconstructed in its entirety to its prior condition.

**8.20.070 – Regulations governing nonconforming lots.**

A. Right to develop

A nonconforming lot shall be considered a legal and buildable lot, and may be developed in accordance with the development standards applicable to the zoning district in which it is located. Setbacks and other development standards must be met, unless a variance is requested and approved under the applicable criteria in section 8.12.130.

B. Subdivision or adjustment of a nonconforming lot

No subdivision or lot line adjustment shall be approved that would increase the degree of nonconformity of an existing nonconforming lot.

**SECTION 4:** Moraga Municipal Code Chapter 8.24 – One Dwelling Unit per Acre Residential District is deleted in its entirety and replaced with the following:

**Chapter 8.24 - ONE, TWO, AND THREE DWELLING UNITS PER ACRE RESIDENTIAL DISTRICTS**

**Sections:**

**8.24.010 - Purpose.**

The purpose of the 1-DUA, 2-DUA, and 3-DUA zoning districts is to provide for a residential environment consisting of low density, detached, single-family homes consistent with the general plan.

**8.24.020 – Establishment of land use districts.**

The following single-family residential land use districts are established:

- A. One dwelling unit per acre residential;
- B. Two dwelling units per acre residential
- C. Three dwelling units per acre residential.

**8.24.030 - Design guidelines consideration.**

Notwithstanding the provisions of this chapter, all residential development projects must conform with the Town of Moraga Design Guidelines, including the floor area ratio (FAR) standards for residential development, or be granted an exception to one or more of the Design Guidelines by the Design Review Board in accordance with the procedures set forth in Chapter 8.72.

**8.24.040 - Uses permitted.**

- A. A detached single family dwelling on each lot and the accessory structures and uses normally auxiliary to it;
- B. Crop and tree farming with no on-site sales;
- C. Public park, playground or trail and accessory related facilities if the Planning Commission makes a specific finding that the use is consistent with the General Plan;
- D. Secondary living units approved under Chapter 8.124;
- E. Supportive housing and transitional housing of the same type allowed in this district;
- F. Keeping of small farm animals consistent with Chapter 8.92, Article 1;
- G. Home occupations in conformance with Chapter 8.112; and
- H. Operation of a foster or small family home, family care home, or small family day care home not to exceed six persons in addition to the resident family consistent with State law.

### **8.24.050 - Conditional uses.**

In these districts, each of the following uses is permitted on issuance of a conditional use permit:

- A. Community building, church, club or activity or a quasi-public social or fraternal character not organized for profit, such as veterans or fraternal organizations;
- B. Private recreational facilities and uses not organized and operated for profit, such as a golf, tennis or swimming club intended primarily for use by the residents of a neighborhood or subdivision;
- C. The keeping of livestock (see Chapter 8.92, Article 2); and
- D. A use which the planning commission, after notice and public hearing, has found to be comparable to any of the foregoing uses.

### **8.24. 060 –Minimum lot area and yard setback regulations.**

The minimum lot area and setbacks for principal structures in the one, two, and three dwelling units per acre residential land use districts are set forth in the following table:

		SFR 1 DU/acre	SFR 2 DU/acre	SFR 3 DU/acre
	Minimum lot area	30,000 sq. feet	20,000 sq. feet	10,000 sq. feet
	Minimum lot width	140 feet	120 feet	80 feet
	Minimum lot depth	140 feet	120 feet	100 feet
	Minimum front yard setback*	25 feet	25 feet	20 feet
	Exterior side yard setback (corner lots)	25 feet	20 feet	15 feet
	Minimum side yard setback	20 feet	15 feet	10 feet
	Sum of side yards	N/A	35 feet	20 feet
	Minimum rear yard setback	25 feet	20 feet	15 feet

\* The front yard setback for two or more lots fronting on a private street is governed by Section 8.68.110.

### **8.24.070 – Single family residences – nonconforming setbacks.**

- A. For lots developed with a detached single family residence prior to November 7, 1980, the front and side yard setbacks established under the previous County zoning shall be applied to building additions as prescribed by section 8.68.050 of this code.
- B. For residential buildings that have nonconforming setbacks, but are not eligible to apply the provisions of section 8.68.050 related to the previous County setbacks, a building

addition or deck may continue an existing exterior wall within a normally required setback as provided in section 8.20.060.C(2) and 8.20.060.C(3).

#### **8.24.080 - Maximum building height.**

At no point shall the building height of a structure in these districts exceed two stories or thirty five (35) feet, whichever is less. On lots where a building is stepped down a slope and the building footprint slope is 20% or greater, the maximum aggregate building height shall not exceed forty five (45) feet. However, if upon design review, the reviewing authority finds that the building height proposed for the structure will create a significant adverse effect on neighboring properties or is incompatible with the natural terrain or vegetation, the reviewing authority may reduce the maximum building height permitted to a height which eliminates or mitigates the adverse effects of the building height proposed. Measurement of building height shall be as defined in Chapter 8.04 of this Title.

#### **8.24.090 - Accessory structures and buildings.**

Setbacks and other development standards for accessory structures and buildings, including decks, shall be as defined in Chapter 8.70 of this code.

#### **8.24.100 – Fences and walls.**

Setbacks and development standards for fences and walls shall be as defined in Section 8.68.040 of this code.

**SECTION 5:** Moraga Municipal Code Chapter 8.28 – Two and Three Dwelling Units per Acre Residential Districts is deleted in its entirety.

**SECTION 6:** Moraga Municipal Code Chapter 8.68 – Lot Size, Yard and Setback Requirements is deleted in its entirety and replaced with the following:

### **Chapter 8.68 –GENERAL STANDARDS FOR LOTS, YARDS, SETBACKS, FENCES AND WALLS**

#### **Sections:**

#### **Article 1. - Lots**

#### **8.68.010 - Division of lots.**

A person shall not divide a lot or parcel and shall not convey a lot or parcel or any part of it if the division or conveyance so reduces the area, width, yard or setback of the lot or parcel or creates a lot or parcel with an area, width, yard, or setback so small that it does not conform to this title.



### **8.68.020 - Required area reduced by public use.**

If part of a lot or parcel having not less than the required area for its land use district is acquired for public use and if the remainder of the lot or parcel has not less than eighty (80) percent of the area required for its land use district, the remainder shall be considered as having the required area. However, setback, side yard, and rear yard requirements shall be met. If a lot or parcel has an authorized nonconforming status as to area under any Town ordinance, the parcel shall retain its nonconforming status if the acquisition for public use does not reduce the remainder below eighty (80) percent of the existing nonconforming area. The setback, side yard, and rear yard requirements of the land use district shall be met for any new development thereafter, except for buildings or structures in existence at the time of public acquisition.

## **Article 2. - Setbacks**

### **8.68.030 - Setback requirements.**

On a corner lot the setback requirement applicable to the land use district in which the lot is located applies to both public and private road, street or highway frontage of the lot. The setback line of a parcel of land is common with the right-of-way line of a public or private road, street or highway.

## **Article 3. – Fences and Walls**

### **8.68.040 –Fences and Walls within Setbacks.**

- A. Fences in Front and Exterior Side Yard Setback Areas. No fence or wall higher than three feet is permitted within a front yard or exterior side yard setback area without the prior approval of the zoning administrator. Fences or walls exceeding six feet and up to seven feet six inches in height are permitted in the front or exterior side yard setback areas subject to approval of the design review board. The reviewing authority shall consider whether the fence design and location: (1) are aesthetically compatible in the neighborhood; and (2) do not create sight obstructions as set forth in Section 8.80.010.
- B. Fences or Walls in Side and Rear Yard Setback Areas.
  - 1. Fences or walls up to six feet in height are permitted within side or rear yard setback areas.
  - 2. Fences or walls exceeding six feet and up to seven feet six inches in height are permitted in side or rear yard setback areas subject to approval of the Design Review Board. The Design Review Board shall consider whether the fence or wall design, height and location: (a) are aesthetically compatible with the neighborhood; (b) do not create sight obstructions as set forth in Section 8.80.010 or to the adjacent properties; and (c) do not create health and safety problems.
- C. Fences or walls exceeding seven feet six inches in height and located within any setback require a variance approval from the planning commission with specific findings set forth in Section 8.12.130.

## **Article 4. - Yards**

### **8.68.050 - Front and side yard setbacks established under county zoning.**

Notwithstanding any provision in this title to the contrary, the front and side yard setbacks applicable to a lot on which a detached single family residence was constructed in the former R-10, R-15 and R-20 zones under county zoning regulations in effect prior to November 7, 1980 shall be the front and side yard setbacks that were in effect at the time of development pursuant to the subdivision's development standards or County zoning regulations. County zoning regulations prior to November 7, 1980 are shown below: (updated adopted code)

County Zone	Minimum Front Yard	Minimum Side Yard	Sum of Side Yards	Exterior Side Yard
R-10	20 feet	10 feet	20 feet	15 feet
R-15	20 feet	10 feet	25 feet	15 feet
R-20	25 feet	15 feet	35 feet	20 feet

These setbacks shall apply to additions and alterations to single family residences existing on the effective date of this Ordinance but shall not apply to new, separate structures on the same lot as an existing single family residence such as a detached secondary or accessory dwelling unit or a detached accessory structure or building.

### **8.68.060 - Obstructions in yard areas.**

- A. Except as otherwise provided in this Title, every part of a required yard area shall be open and unobstructed to the sky. However, a fire escape, open stairway or landing, ADA access facility, at-grade paving or decking materials, chimney, the ordinary projection of a sill, belt-course, cornice, eave, or bay window, or an ornamental feature which does not obstruct the light and ventilation on any adjoining parcel, is not considered an obstruction and does not violate the prescribed yard regulations.
- B. Movable, disassemblable, and/or demountable objects or structures such as small-scale, children's play equipment (e.g., swing sets, climbing frames, slides, trampolines, basketball hoops, etc.), or shade structures such as shade sails and open-sided canopies, whether attached or unattached to the ground, are not obstructions and may be located within any required yard, subject to the following limitations:
  - i. Climbing frames, and similar structures shall have a deck height no greater than 8 feet, and total height no greater than 15 feet.
  - ii. Shade structures shall not block or cover a vehicle access easement, driveway, parking area, garage or carport. If visible from the public street, shade structures shall not be used for the purposes of covering vehicles or stored household items (other than outdoor furniture) for any period longer than 72 hours.
  - iii. Any object or structure permitted under this section shall not have a footprint larger than 400 square feet.

#### **8.68. 070 - Accessory use in rear yard.**

An accessory building, accessory structure, or accessory use may occupy only up to thirty (30) percent of a required rear yard, except that swimming pools, tennis courts, and similar facilities located at or below grade are not counted toward this limitation.

#### **8.68. 080 - Rear yard abutting on side yard.**

In each single-family residential district and each multiple-family residential district, there shall be a rear yard of not less than five feet wherever the rear yard of a lot or parcel of land abuts on a side yard.

#### **8.68.090 – Front lot line of a corner lot.**

The front lot line of a corner lot shall be the lot line located on the principal street. In the event that it is unclear which of two intersecting streets is the principal street, the Planning Director or the Public Works Director shall make a determination based on factors such as the orientation of the primary building on the lot and patterns of development in the vicinity of the subject lot.

#### **8.68.100 - Double frontage.**

Where both the front and rear of a lot abut a public or private street a front yard shall be maintained from both streets.

#### **8.68.110 - Front yard setback for lots on private streets.**

The front yard setback for a lot fronting on a private street shall be the front yard setback specified in the land use district plus one-half of the right-of-way width specified for a minor street for a subdivision measured from the center of the private street.

#### **8.68.120 - Access to garage on corner lot.**

- A. The purpose of this section is to prescribe special regulations governing vehicle access to the garage structure on a corner lot in order to:
  - 1. Minimize the number of access points on to and off of heavily traveled streets;  
Provide adequate distance between the garage and the right-of-way so that a vehicle when parked upon the driveway apron within the side yard setback area does not encroach into the right-of-way.
- B. Location of Access. Access to off-street parking on a corner lot shall be from the right-of-way having the lowest average daily traffic (ADT) as determined by the planning director.

**SECTION 7:** Chapter 8.70 – Accessory Structures and Buildings of Title 8, Planning and Zoning, of the Moraga Municipal Code is added as follows:

## **Chapter 8.70 – ACCESSORY STRUCTURES AND BUILDINGS**

### **Sections:**

#### **8.70.010 – Applicability.**

The provisions of this chapter shall apply to accessory structures and buildings in all residential districts.

#### **8.70.020 - Accessory Buildings.**

- A. Applicability. This section shall apply to any accessory building. This section shall not apply to objects and structures allowed pursuant to Section 8.68.060.
- B. Except as provided in subsection (C) below, accessory buildings shall be subject to the setbacks prescribed for a principal structure within the applicable zoning district.
- C. Notwithstanding the requirements of Section 8.70.020.B., any shed, greenhouse or playhouse not exceeding a total of one hundred twenty (120) square feet in floor area, with a height of no more than eight (8) feet, may be located anywhere within a required side or rear yard, provided that it is reasonably screened from view from the front of the property by a fence, building, or landscaping.
- D. Accessory buildings shall be placed so as to maintain a clear path of access at least five feet wide from the front of the property to the rear yard.
- E. Accessory buildings fifteen (15) feet in height or taller shall be subject to review and approval by the Design Review Board.

#### **8.70.030 – Accessory Structures.**

- A. Applicability. This section shall apply to any accessory structure not otherwise subject to regulation as an accessory building, deck, pool, fence or wall under this Chapter, including but not limited to arbors, pergolas, trellises, outdoor kitchens and fireplaces, and similar structures. This section shall not apply to objects and structures allowed pursuant to Section 8.68.060.
- B. The minimum side yard setback for an accessory structure of eight feet or less in height is three feet if the structure is set back at least fifty (50) feet from the front property line. An accessory structure higher than eight feet is permitted to have a similar setback upon approval by the design review board.
- C. A single arbor-style entry element in the front yard setback of a residential property is permitted if it is located over a walkway or pathway and does not exceed nine feet in height, five feet in width, three feet in depth and provided that such entry element does not create sight obstructions as set forth in Section 8.80.010.
- D. For the purposes of this title, a shipping container placed on a lot is considered an accessory structure. Such accessory structures shall not be permitted on any residentially zoned lot. When located on a lot in a non-residential zone for the purpose

of storage or any other accessory use a shipping container shall be placed out of view, or screened from view, from public streets. This section does not apply to temporary moving containers/moving pods placed on private property for no more than 45 days in any 12-month period, or to containers used for temporary storage for the duration of construction activities associated with an approved building permit.

- E. Accessory structures fifteen (15) feet in height or taller shall be subject to review and approval of the Design Review Board.

#### **8.70.040 – Decks.**

- A. Any open, uncovered deck twenty-four (24) inches or less above existing grade may extend into the minimum required building setback as follows:
- i. Front setback: 10 feet, but not closer than 10 feet from a front lot line
  - ii. Exterior Side Setback: 5 feet, but not closer than 10 feet from any exterior side lot line
  - iii. Side Setback: 10 feet, but not closer than 5 feet from any side lot line
  - iv. Rear Setback: 15 feet, but no closer than 5 feet from any rear lot line
- B. Any deck with a floor higher than twenty-four (24) inches above existing grade shall comply with the setbacks of the primary building, except that a new or expanded deck attached to a residential building, where such building does not conform with current setback requirements, shall be subject to the provisions of Section 8.20.060(C)(3).

#### **8.70.050 – Pools.**

- A. Setbacks Relating to Pools. The following special setbacks are required for a pool, spa or hot tub in each land use district to serve the purposes of noise mitigation, open space, access, safety and aesthetics.

1.	Front yard setback	20 ft.
2.	Exterior side yard setback:	15 ft.
3.	Side yard setback; rear yard setback:	5 ft.
4.	Minimum distance from pool equipment (and related equipment pad or shelter) to property line (see also Section 7.12.080):	5 ft.

The requirements for pool fencing and the minimum height of such fences are those set forth in County code Chapter 718-4. Fences may be subject to design review under Section 8.24.040(B).

**SECTION 8:** Effective Date. This ordinance becomes effective thirty (30) days after its final passage and adoption.

**SECTION 9:** This Ordinance shall be published and posted according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

**SECTION 10:** 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.

The foregoing ordinance was introduced at a meeting of the Town Council of the Town of Moraga, California, held on April 26, 2017 and was passed and adopted at a meeting of the Town Council meeting held on May 10, 2017 by the following vote.

<b>AYES:</b>	Mayor Onoda, Vice Mayor Wykle, Councilmembers Fritzky and Trotter
<b>NOES:</b>	None
<b>ABSTAIN:</b>	None
<b>ABSENT:</b>	Councilmember Korpus

AFFIRMED:

\_\_\_\_\_  
Teresa Onoda, Mayor

ATTEST:

\_\_\_\_\_  
Marty C. McInturf, Town Clerk