CITY OF MORGAN HILL

Regular Meeting Agenda

Planning Commission

JOSEPH MUELLER	-	*CHAIR*
WAYNE TANDA	-	*VICE-CHAIR*
LIAM DOWNEY	-	*PLANNING COMMISSIONER*
MOHAMMAD HABIB	-	*PLANNING COMMISSIONER*
PAUL LAKE	-	*PLANNING COMMISSIONER*
MALISHA KUMAR	-	*PLANNING COMMISSIONER*
JAMES WILSON	-	*PLANNING COMMISSIONER*

Tuesday, August 23, 2022 7:00 PM

Virtual Meeting

VIRTUAL MEETING GUIDELINES AND PUBLIC COMMENT

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. Physical meetings will not be in the City Council Chamber until further notice.

Planning Commission meetings will be live streamed on Channel 17, on the City's website and on the City's Facebook page. Those members of the community that would like to participate in the meetings remotely may do so by join the virtual meeting at: https://bit.ly/PlanningCommissionMtg or by calling in to: (669) 900-9128, then enter the webinar ID#: 862 0324 6251.

Public comment may be provided in the following ways:

- Join the virtual Planning Commission meeting via the link above, when public comment is opened, raise your virtual hand and be called upon to speak for up to 3 minutes
- Join the virtual meeting by calling in to the number above, dial *9 to raise your hand and *6 when called upon to speak for up to 3 minutes
- Send public comments in writing to the Minutes Clerk at pcpubliccomment@morganhill.ca.gov

* Please note that comments made on Facebook are not considered public comment.

CALL TO ORDER

ROLL CALL ATTENDANCE

DECLARATION Of POSTING

Pursuant to Government Code Section 54954.2

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

Members of the public are entitled to address the Planning Commission concerning any item within the Morgan Hill Planning Commission's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the Commission is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

ORDERS OF THE DAY

MINUTES APPROVAL

1. July 26, 2022 MEETING MINUTES

Recommendation:

1. Accept Minutes

PUBLIC HEARINGS

2. AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING SECTION 14.04.040 (GENERAL REQUIREMENTS) AND SECTION 14.040.060 (CONTINUED AFFORDABILITY AND CITY REVIEW OF OCCUPANCY) OF CHAPTER 14.04 (INCLUSIONARY HOUSING) OF TITLE 14 (HOUSING) TO CLARIFY INCLUSIONARY HOUSING REGULATIONS AND ENACTING CHAPTER 18.48 (DENSITY BONUS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING GRANTING OF DENSITY BONUS, INCENTIVES/CONCESSIONS AND WAIVERS OR REDUCTION OF DEVELOPMENT STANDARDS FOR HOUSING PROJECTS THAT INCLUDE AFFORDABLE UNITS, AS REQUIRED BY STATE LAW (AB 1763)

Recommendation:

1. Open/close public hearing; and
2. Adopt a resolution recommending City Council approval of the Municipal Code Amendments.

DIRECTOR'S REPORT/ANNOUNCEMENTS

ADJOURNMENT

NOTICE

Any documents produced by the City and distributed to the majority of the Planning Commission less than 72 hours prior to an open meeting, will be made available for public inspection at the front counter at City Hall located at 17575 Peak Avenue, Morgan Hill, CA, 95037 and at the Morgan Hill Public Library located at 660 West Main Avenue, Morgan Hill, California, 95037 during normal business hours. (Pursuant to Government Code 54957.5)

PUBLIC COMMENT

Members of the Public are entitled to directly address the Planning Commission concerning any item that is described in the notice of this meeting, before or during consideration of that item. If you wish to address the Planning Commission on any issue that is on this agenda, please complete a speaker request card located in the foyer of the Council Chambers and deliver it to the Minutes Clerk prior to discussion of the item. You are not required to give your name on the speaker card in order to speak to the Planning Commission, but it is very helpful. When you are called, proceed to the podium and the Chair will recognize you. If you wish to address the Planning Commission on any other item of interest to the public, you may do so during the public comment portion of the meeting following the same procedure described above. Please limit your comments to three (3) minutes or less.

Please submit written correspondence to the Minutes Clerk, who will distribute correspondence to the Planning Commission.

Persons interested in proposing an item for the Planning Commission agenda should contact a member of the Commission who may plan an item on the agenda for a future Commission meeting. Should your comments require Planning's action, your request may be placed on the next appropriate agenda. Planning Commission discussion or action may not be taken until your item appears on an agenda. This procedure is in compliance with the California Public Meeting Law (Brown Act) Government Code §54950.

City Council Policies and Procedures (CP 03-01) outlines the procedure for the conduct of public hearings. Notice is given, pursuant to Government Code Section 65009, that any challenge of Public Hearing Agenda items in court, may be limited to raising only those issues raised by you or on your behalf at the Public Hearing described in this notice, or in written correspondence delivered to the Commission at, or prior to the Public Hearing on these matters.

The time within which judicial review must be sought of the action by the Commission, which acted upon any matter appearing on this agenda is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.

For a copy of Commission Policies and Procedures CP 97-01, please contact the City Clerk's office (408) 779-7259, (408) 779-3117 (fax) or by email cityclerk@morganhill.ca.gov.

AMERICANS WITH DISABILITIES ACT (ADA)

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact the City Clerk's Office at (408)779-7259, (408)779-3117 (fax) or by email cityclerk@morganhill.ca.gov. Requests must be made as early as possible and at least two-full business days before the start of the meeting.

CITY OF MORGAN HILL

Meeting Minutes

Planning Commission

JOSEPH MUELLER	-	*CHAIR*
WAYNE TANDA	-	*VICE-CHAIR*
LIAM DOWNEY	-	*PLANNING COMMISSIONER*
MOHAMMAD HABIB	-	*PLANNING COMMISSIONER*
PAUL LAKE	-	*PLANNING COMMISSIONER*
MALISHA KUMAR	-	*PLANNING COMMISSIONER*

Tuesday, July 26, 2022 7:00 PM

Virtual Meeting

CALL TO ORDER

Chair Mueller called the meeting to order at 7:00 p.m.

ROLL CALL ATTENDANCE

Minutes Clerk Jenna Luna called the roll at 07:00 p.m.

STATUS	ATTENDEE
PRESENT	Malisha Kumar, Joseph Mueller, Wayne Tanda, Mohammad Habib, Liam Downey, Paul Lake
ABSTAIN	**None**
ABSENT	**None**
EXCUSED	**None**

DECLARATION Of POSTING

Minutes Clerk Luna declared the posting of the agenda at 07:00 p.m.

PLEDGE OF ALLEGIANCE

Planning Commissioner Kumar led the Pledge of Allegiance at 7:01 p.m.

PUBLIC COMMENT

Chair Mueller opened the Public Comment Period at 7:01 p.m. Hearing no requests to speak on non-agendized items, the Public Comment Period was closed.

ORDERS OF THE DAY

There were no changes made.

CONSENT AGENDA

MOTION:

Accept Consent Agenda

RESULT:	Passed
MOVER:	Planning Commissioner Downey
SECONDER:	Planning Commissioner Lake
AYES:	Kumar, Mueller, Tanda, Habib, Downey, Lake
NAYS:	None
ABSTAIN:	None
ABSENT:	None

1. June 14, 2022 Meeting Minutes

Recommendation:

1. Accept Minutes

2. June 28, 2022 Meeting Minutes

Recommendation:

1. Accept Minutes

PUBLIC HEARINGS

3. UP2020-0009/EA2020-0018: PEAK - AMAS: A REQUEST FOR A CONDITIONAL USE PERMIT TO ADD TWO BEDROOMS (4-BEDS) TO THE EXISTING VILA MONTE SENIOR CARE FACILITY AND EXPAND SERVICES INTO A NEW 8,171 SQUARE FOOT MULTI-STORY BUILDING CONSISTING OF 48 BEDROOMS (96-BEDS) WITH ANCILLARY COMMUNAL SPACE.

Recommendation:

1. Open/close public hearing; and
2. Adopt a Resolution approving a Conditional Use Permit for the expansion of the Senior Care Facility.

Senior Planner Tiffany Brown presented the Staff Report at 7:06 p.m.

Chair Mueller opened the public hearing at 7:22 p.m. The following individuals addressed the Planning Commission:

- Michael De Castro
- Nelly Amas
- Michael De Castro
- Kathy, Kathy spoke on the behalf of Mike D.
- Nelly Amas

Hearing no further requests to speak, the Public Hearing was closed at 8:03 p.m.

MOTION:

Deny the resolution approving the Conditional Use Permit.

RESULT:	Withdrawn
MOVER:	Planning Commissioner Downey
SECONDER:	Planning Commissioner Lake
AYES:	None
NAYS:	None
ABSTAIN:	None
ABSENT:	None

Planning Commissioner Downey withdrew his motion after further discussion.

MOTION:

Continue to Date Uncertain

RESULT:	Passed
MOVER:	Planning Commissioner Downey
SECONDER:	Planning Commissioner Lake
AYES:	Kumar, Mueller, Tanda, Habib, Downey, Lake
NAYS:	None
ABSTAIN:	None
ABSENT:	None

The Planning Commission Meeting recessed at 8:38 p.m.
The Planning Commission meeting reconvened at 8:47 p.m.

4. PUBLIC REVIEW OF THE DRAFT CITY OF MORGAN HILL 2023-2031 HOUSING ELEMENT UPDATE

Recommendation:

1. Planning Commission to review the Draft City of Morgan Hill 2023-2031 Housing Element Update and adopt the Resolution recommending that the City Council direct the City to submit the Draft 2023-2031 Housing Element to the California Department of Housing and Community Development for review.

Principal Planner Adam Paszkowski presented the staff report at 8:48 p.m.

Chair Mueller opened the public hearing at 9:14 p.m. The following individuals addressed the Planning Commission:

- Kalisha Webster
- Joe Baranowski

Hearing no further requests to speak, the public hearing was closed at 9:21 p.m.

MOTION:

Adopt a resolution recommending that the City Council direct the City to submit the Draft 2023-2031 Housing Element to the California Department of Housing and Community Development for review.

RESULT:	Passed
MOVER:	Planning Commissioner Lake
SECONDER:	Planning Commissioner Tanda
AYES:	Kumar, Mueller, Tanda, Habib, Downey, Lake
NAYS:	None
ABSTAIN:	None
ABSENT:	None

OTHER BUSINESS

5. SELECTION OF PLANNING COMMISSION CHAIRPERSON AND VICE-CHAIR

Recommendation:

1. Planning Commission to select a Chairperson and Vice Chair.

Community Development Director Jennifer Carman presented the item at 9:48 p.m.

MOTION:

Appoint Planning Commissioner Mueller to serve as Chair and appoint Planning Commissioner Tanda to serve as Vice-Chair.

RESULT:	Passed
MOVER:	Planning Commissioner Downey
SECONDER:	Planning Commissioner Lake
AYES:	Kumar, Mueller, Tanda, Habib, Downey, Lake
NAYS:	None
ABSTAIN:	None
ABSENT:	None

DIRECTOR'S REPORT/ANNOUNCEMENTS

Community Development Director Jennifer Carman made an announcement at 9:50 p.m.

ADJOURNMENT

There being no further business to discuss, Chair Mueller adjourned the meeting at 9:56 p.m.

MINUTES PREPARED BY:
Jenna Luna, Minutes Clerk

CITY OF MORGAN HILL

PLANNING COMMISSION STAFF REPORT
MEETING DATE: August 23, 2022

PREPARED BY:
Cynthia Hasson, Assistant City Attorney
APPROVED BY: Jennifer Carmen

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING SECTION 14.04.040 (GENERAL REQUIREMENTS) AND SECTION 14.040.060 (CONTINUED AFFORDABILITY AND CITY REVIEW OF OCCUPANCY) OF CHAPTER 14.04 (INCLUSIONARY HOUSING) OF TITLE 14 (HOUSING) TO CLARIFY INCLUSIONARY HOUSING REGULATIONS AND ENACTING CHAPTER 18.48 (DENSITY BONUS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING GRANTING OF DENSITY BONUS, INCENTIVES/CONCESSIONS AND WAIVERS OR REDUCTION OF DEVELOPMENT STANDARDS FOR HOUSING PROJECTS THAT INCLUDE AFFORDABLE UNITS, AS REQUIRED BY STATE LAW (AB 1763)

RECOMMENDATION(S)

1. Open/close public hearing; and
2. Adopt a resolution recommending City Council approval of the Municipal Code Amendments.

LOCATION MAP/PROJECT INFORMATION:

The City of Morgan Hill's Inclusionary Housing Ordinance (IHO) is codified at Chapter 14.04 in Title 14 (Housing) of the City's Municipal Code. The IHO requires that specified percentages of residential units, typically in market-rate projects, be restricted as to affordability. This proposed amendment to the ordinance will clarify that the IHO does not apply to projects that are 100 percent affordable and subject to other affordability restrictions to reduce conflicts between state law and other requirements and the IHO.

Additionally, state law requires that local jurisdictions have an ordinance to implement density bonus law. The draft ordinance proposes the density bonus ordinance be reinstated in a revised form in Chapter 18.48 of the Zoning Code.

BACKGROUND:

Inclusionary Housing Ordinance

The City's Inclusionary Housing Ordinance was enacted in 2018 and has been amended a couple of times, including in December 2021. Since that time, the City has received several applications for 100 percent affordable housing projects, all of which sought the benefits of the density bonus law, which requires that the units be restricted for continuing affordability. For rental projects, the term of restriction is 55 years for all units excluding the manager's units, and for-sale units are required to be restricted for 45 years. Meanwhile, the IHO requires that only 10 or 15 percent of units be deed restricted, resulting in two agreements with different applicability being recorded on the same property. Additionally, the ordinance is silent as to subordination, which means that on occasion the affordability restrictions could be subordinated to later loans.

Density Bonus Ordinance

The City of Morgan Hill formerly had an Affordable Housing chapter within the Zoning Code

(Chapter 18.48) which contained some overlap with Title 14 Housing. With the changes in the law due to AB 1763 and the revisions to the City's IHO in December 2021, the intent was to revise the section, but it was inadvertently removed. Chapter 18.48, as enacted by Ordinance number 2277 in 2018, required that the City Council grant the density bonus and one or more concessions or incentives. State law has made it increasingly difficult to deny density bonuses, concessions or incentives, or waivers or reductions in development standards for housing developments that contain the requisite minimum number of affordable units in a project. These may only be denied based on the findings of a specific adverse impact, as defined, upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. California Government Code Section 65589.5(d)(2) defines a “specific, adverse impact” as a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete."

Additionally, other changes in state law restrict the City to no more than five meetings or hearings for any housing development project. Following the former process required the City to use one of the five allowed meetings to grant a density bonus and other incentives that are mandated by State law.

PROJECT DESCRIPTION:

Inclusionary Housing

The draft ordinance clarifies that the IHO does not apply to rental residential developments that are developed in accordance with, and subject to, a recorded governmental agency deed restriction or regulatory agreement that imposes rent and household income eligibility restrictions on all residential units in the Residential Development with the exception of managers’ units. To be exempt from the IHO, it is required that the deed restriction or regulatory agreement be recorded against the property, must be binding on successors in interest for at least the same duration as would otherwise be required pursuant to this Chapter 14.04 (55 years), and must be executed by and between the property owner and any of the following entities and agencies: the City of Morgan Hill, the County of Santa Clara, the California Tax Credit Allocation Committee, the issuer of tax-exempt bonds used to finance the Residential Development, the California Department of Housing and Community Development or any other State of California agency, and the U.S. Department of Housing and Urban Development or any other federal agency.

Additionally, language is proposed to be added to support the ongoing affordability of the deed-restricted units. The proposed language establishes that the affordability restrictions are senior in priority to any private liens or encumbrances. There is an exception if the City Manager determines that subordination is necessary to finance the affordable units. The primary intent is to prevent the loss of affordable units in the event of foreclosure.

Density Bonus

Government Code Section 65915 requires that the City adopt an ordinance that specifies how compliance with the density bonus law will be implemented. The draft ordinance provides for granting a density bonus, concessions incentives, and waivers or reduction of development standards at the administrative level by the Development Services Director. If the Development Services Director recommends findings for denial of any of the above, the Director would elevate the matter to the Planning Commission.

PROJECT ANALYSIS AND FINDINGS:

ANALYSIS

The proposed draft ordinance was analyzed with respect to conformance with: 1) Morgan Hill 2035 General Plan and 2) Zoning Ordinance

Section 18.114.060 of the Morgan Hill Municipal Code requires findings enumerated below that:

1. The proposed amendment is consistent with the General Plan and any applicable Specific Plan as provided by Government Code Section 65860.
The proposed text amendments will implement General Plan Goals and Policies, including those aimed at creating and preserving affordable housing in the community.

2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the city.
The proposed text amendments will not be detrimental to the public interest, health, safety, convenience, or welfare of the City because these are intended to clarify inclusionary housing program applicability and to reduce redundancy for 100 percent affordable projects, to protect against the loss of affordable units by restricting subordination, and to comply with State law density bonus requirements.

3. The proposed amendment is internally consistent with other applicable provisions of the zoning code.
The proposed amendment is internally consistent with other applicable provisions of the zoning code because this ordinance clarifies existing requirements for inclusionary housing, and reinstates the density bonus provisions which were inadvertently repealed, consistent with existing provisions.

CONCLUSION:

The Planning Commission should recommend to the City Council the approval or conditional approval of the proposed Zoning Code amendment, based upon the findings specified in Section 18.114.060 (Findings for Approval) as analyzed above.

CEQA (California Environmental Quality Act):

This ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, as the proposed text amendments to the Morgan Hill Zoning Code is not a project with potential for causing a significant effect on the environment, requiring California Environmental Quality Act (CEQA) analysis.

COMMUNITY ENGAGEMENT:

A 10-day public hearing notice was published in the August 12, 2022 edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notices were also provided on the City’s 411 and the City’s website.

ATTACHMENTS:

1. Draft PC Resolution
2. Chapter 14.40 and Chapter 18.48

RESOLUTION NO. 22-16

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING SECTION 14.04.040 (GENERAL REQUIREMENTS) AND SECTION 14.040.060 (CONTINUED AFFORDABILITY AND CITY REVIEW OF OCCUPANCY) OF CHAPTER 14.04 (INCLUSIONARY HOUSING) OF TITLE 14 (HOUSING) TO CLARIFY INCLUSIONARY HOUSING REGULATIONS AND ENACTING CHAPTER 18.48 (DENSITY BONUS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING GRANTING OF DENSITY BONUS, INCENTIVES/CONCESSIONS AND WAIVERS OR REDUCTION OF DEVELOPMENT STANDARDS FOR HOUSING PROJECT THAT INCLUDE AFFORDABLE UNITS, AS REQUIRED BY STATE LAW (AB 1763)

WHEREAS, this proposed City-initiated Ordinance was considered by the Planning Commission of the City of Morgan Hill at its regular meeting on July 26, 2022;

WHEREAS, the Planning Commission has reviewed recommendations contained in the July 26, 2022 staff report on this item;

WHEREAS, the amendments proposed by this Ordinance are necessary to clarify inclusionary housing program applicability and to reduce redundancy for 100 percent affordable projects, to protect against the loss of affordable units by restricting subordination, and to comply with State law density bonus requirements;

WHEREAS, this ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, as the proposed text amendments to the Morgan Hill Zoning Code is not a project with potential for causing a significant effect on the environment requiring California Environmental Quality Act (CEQA) analysis.; and

WHEREAS, testimony received at a duly noticed public hearing, along with exhibits and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The proposed amendment is consistent with the General Plan and any applicable specific plan as provided by Government Code Section 65860.

The proposed text amendments will implement General Plan Goals and Policies including those aimed at preserving affordable housing in the community.

SECTION 2. The proposed amendments will not be detrimental to the public interest, health, safety, convenience, or welfare of the City. The proposed text amendments are intended to clarify inclusionary housing program applicability and to reduce redundancy for 100 percent affordable projects, to protect against the loss of affordable units by restricting subordination, and to comply with State law density bonus requirements.

SECTION 3. The proposed amendment is internally consistent with other applicable provisions of the zoning code. This ordinance clarifies existing requirements for inclusionary housing, and reinstates the density bonus provisions which were inadvertently repealed, consistent with existing provisions.

SECTION 4. The Planning Commission hereby recommends approval of amendments to the text of the Morgan Hill Municipal Code to amend sections 14.04.040 (General Requirements) and 14.40.060 (Continued Affordability and City Review Of Occupancy) of Chapter 14.04 (Inclusionary Housing) of Title 14 (Housing) and add a new chapter 18.48 (Density Bonus) of Title 18 (Zoning). All text amendments recommended to be made are as shown in the draft ordinance (Attachment 2 of the staff report).

PASSED AND ADOPTED THIS __ DAY OF AUGUST 2022, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ATTEST:	**APPROVED:**
______________________________	______________________________
Jenna Luna, Deputy City Clerk	**Joseph Mueller, Chair**

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING SECTION 14.04.040 (GENERAL REQUIREMENTS) AND SECTION 14.040.060 (CONTINUED AFFORDABILITY AND CITY REVIEW OF OCCUPANCY) OF CHAPTER 14.04 (INCLUSIONARY HOUSING) OF TITLE 14 (HOUSING) TO CLARIFY INCLUSIONARY HOUSING REGULATIONS AND ENACTING CHAPTER 18.48 (DENSITY BONUS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING GRANTING OF DENSITY BONUS, INCENTIVES/CONCESSIONS AND WAIVERS OR REDUCTION OF DEVELOPMENT STANDARDS FOR HOUSING PROJECT THAT INCLUDE AFFORDABLE UNITS, AS REQUIRED BY STATE LAW (AB 1763)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

Section 1. Section 14.04.040 (General Requirements) of Chapter 14.04 (Inclusionary Housing) of Title 14 (Housing) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

14.04.040 General requirements.

A. Percentage Requirement; In Lieu Fee.

1. Requirement. Except as provided in this paragraph A or in paragraphs B and D of this section or section 14.04.070 (Alternatives) at least fifteen percent of all units in residential projects shall be inclusionary units that shall be made available at Affordable Rents or affordable sales prices as prescribed in this section. The inclusionary units shall be approved, and construction of the inclusionary units shall be completed not later than the times prescribed in Section 14.04.050 of this chapter, unless an alternative requirement is approved pursuant to Section 14.04.070 of this chapter.

2. Fractional Number. Whenever application of the requirements of this chapter results in a fractional number of required inclusionary units, if the fraction is 0.50 or greater, construction of the next higher whole number of inclusionary Units shall be required, and where the fraction is 0.49 or less, payment of the applicable housing fee adopted by city council shall be required for the fractional unit.

3. In-Lieu Fee Election for One-Half of Required Inclusionary Units. Developers may elect to satisfy the applicable requirements set forth in paragraphs B, C, D, and E of this section by paying an in-lieu fee for up to one-half of the number of required inclusionary units and constructing the remaining required inclusionary units. If the required number of inclusionary units results in a fractional number, the provisions of the preceding paragraph regarding payment of a fee shall apply to the fractional unit.

B. For-Sale Projects in Downtown. All new for-sale residential projects consisting of two or more dwelling units located within downtown are required to restrict ten percent of the dwelling units for sale at affordable sales prices to moderate-income households. Such dwelling units must be sold to eligible households, and shall be subject to a recorded deed restriction that will impose resale price restrictions for a period of forty-five years.

C. For-Sale Projects Outside of Downtown. All new for-sale residential projects consisting of two or more dwelling units located within the city but outside of downtown are required to restrict fifteen percent of the dwelling units for sale at affordable sales prices to moderate income households. Such dwelling units must be sold to eligible households, and shall be subject to a recorded deed restriction that will impose resale price restrictions for a period of forty-five years.

D. Rental Projects in Downtown. All new rental residential projects consisting of two or more dwelling units located within downtown are required to restrict ten percent of the dwelling units for rent at Affordable Rents and occupancy by low-income and very low-income households. Such dwelling units must be occupied by, or if vacant, available for occupancy by eligible households, and such restrictions shall be documented in a recorded inclusionary affordable housing agreement with a term of fifty-five years. At least one-half of the required inclusionary units shall be occupied by, or if vacant, available for occupancy at Affordable Rents to very low-income households.

E. Rental Projects Outside of Downtown. All new rental residential projects consisting of two or more dwelling units located within the city but outside of downtown are required to restrict fifteen percent of the dwelling units for rent at Affordable Rents and occupancy by low- income and very low-income households. Such dwelling units must be occupied by, or if vacant, available for occupancy by eligible Households, and such restrictions shall be documented in a recorded inclusionary affordable housing agreement with a term of fifty-five years. At least one-half of the required inclusionary units shall be occupied by, or if vacant, available for occupancy at Affordable Rents to very low-income households.

F. Inclusionary Housing Development Standards, Location and Design of Inclusionary Units. Residential projects that include inclusionary units shall conform to the following development standards. These incorporate the standards formerly known as the "Below Market-Rate (BMR) Program Development Standards" adopted by the City Council on September 26, 2018, as such may be amended from time to time.

1. All inclusionary units shall be geographically and proportionally dispersed throughout the residential project. In residential projects that will consist of more than one building, the inclusionary units shall be dispersed among all of the buildings that comprise the development. In residential projects that will consist of more than one product type, the inclusionary units shall be dispersed among the product types, proportionate in number among each of the product types that comprise the development.

2. In for-sale projects, the lot size for the inclusionary units shall be at least the same size as the smallest lot for market-rate units in the residential project.

3. The average bedroom and bathroom count in the inclusionary units shall be the same as the average bedroom and bathroom count in the market-rate units in the residential project.

4. The exterior trim, entry door hardware, and exterior finishes for the inclusionary units shall be of the same standard as the market-rate units in the residential project. There shall not be significant identifiable differences between inclusionary units and the market-rate units that are visible from the exterior of the dwelling units.

5. The interior finishes, equipment, fixtures, and appliances for the inclusionary units shall conform to the following minimum interior standard finishes:

    a. All closets shall have doors;

    b. Interior doors to be raised panel type or same as market-rate;

    c. Door hardware to be brass finish or same as market-rate;

    d. Appliances shall be major brand name (if applicable);

    e. Microwave hood is required to be vented to the exterior. When applicable exhaust vent shall be installed over the range;

    f. Units shall be roughed in for AC including electrical and line set;

    g. Basic alarm system to secure all accessible openings to the home;

    h. Electric garage door opener (if applicable).

6. The size, design, and distribution of model types for the inclusionary units shall be comparable and proportionate in number to the size, design, and distribution of each of the model types for the market-rate units in the residential project.

7. Occupants of inclusionary units shall be provided the same access to project amenities, recreational facilities, and common areas as occupants of market-rate units.

G. For-sale projects. The inclusionary units that are constructed in for-sale projects shall be sold for owner-occupancy at an affordable sales price to moderate-income households that qualify as eligible households. Accessory Dwelling Units (ADU's) constructed within for-sale projects will not be counted toward satisfaction of the requirement to construct inclusionary units.

H. Rental projects. The inclusionary units that are constructed in rental projects shall be occupied by, or if vacant, available for occupancy at Affordable Rents to low- and very low-income households. At least one-half of the required inclusionary units in rental projects, shall be occupied, or if vacant, available for occupancy at Affordable Rents to very low-income households.

I. Exceptions. The affordability levels required for a residential project may be modified by written agreement between the city and the applicant upon a finding that such modification is necessary to effectively achieve the City's RHNA goals in the then-current housing element cycle.

J. This Chapter shall not apply to rental Residential Developments that are developed in accordance with, and subject to, a recorded governmental agency deed restriction or regulatory agreement that imposes rent and household income eligibility restrictions on all residential units in the Residential Development with the exception of managers' units. Such deed restriction or regulatory agreement must be recorded against the property, must be binding on successors in interest for at least the same duration as would otherwise be required pursuant to this Chapter, and must be executed by and between the property owner and any of the following entities and agencies: the City of Morgan Hill, the County of Santa Clara, the California Tax Credit Allocation Committee, the issuer of tax-exempt bonds used to finance the Residential Development, the California Department of Housing and Community Development or any other State of California agency, and the U.S. Department of Housing and Urban Development or any other federal agency.

Section 2. Section 14.04.060 (Continued affordability and city review of occupancy) of Chapter 14.04 (Inclusionary Housing) of Title 14 (Housing) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

14.04.060 Continued affordability and city review of occupancy.

A. Term of affordability—For-sale projects. A resale restriction, covenant, deed of trust and/or other documents in the form prepared by the city attorney, shall be recorded against each inclusionary unit upon the sale of each for-sale unit and shall be senior in priority to any private liens or encumbrances except as provided below, and shall be enforceable by the City against the applicant or the applicant's successors-in-interest to the property for the full affordability term. These documents shall have an initial term of forty-five years, and shall be renewed upon each change of title to the inclusionary unit. The resale restriction, or other documents required by this subsection, and any change in the form of any such documents, shall be approved by the City Manager or his or her designee prior to execution and recordation of such document. The city shall be a party to the resale restriction or other documents required by this subsection and shall have the right to enforce the covenants and restrictions contained therein. The City Manager shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the financing of the affordable housing units would be infeasible without said subordination.

B. Term of affordability—Rental projects. A regulatory agreement, covenant, deed of trust, and/or other documents prepared by the city attorney, shall be recorded against each residential project that contains inclusionary units that are rental units. These documents shall have a term of fifty-five years. The regulatory agreement and other documents required by this subsection, shall run with the land, ~~and~~ shall not be affected by the sale of the property or units in the project, and shall be senior in priority to any private liens or encumbrances except as provided below, and shall be enforceable by the City against the applicant or the applicant's successors-in-interest to the property for the full affordability term. The regulatory agreement and other documents required by this subsection, and any modification to such document, shall be approved by the City Manager or his or her designee and approved as to form by the city attorney, prior to execution and recordation of such document. The city shall be a party to the regulatory agreement or other documents required by this subsection and shall have the right to enforce the covenants and restrictions contained therein. The City Manager shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the financing of the affordable housing units would be infeasible without said subordination.

C. Eligibility requirements. For-sale inclusionary units shall be sold only following city's approval of the affordable sales price and a determination that the purchaser is an eligible household. Such determinations shall be made by the city or its designated administrator as referenced in the Below Market-Rate (BMR) Program Administration, Chapter 14.12, Section 14.12.040, Duties of Program Administrator. If the city or its designee maintains a list of, or otherwise identifies, eligible households, initial and subsequent tenants of rental inclusionary units, and the initial and subsequent purchasers of for-sale inclusionary units shall be selected first from the list of identified households, to the maximum extent possible, in accordance with rules approved by the City Manager or his or her designee.

Section 3. Chapter 18.48 (Density Bonus) is hereby added to Title 18 (Zoning) to read as follows:

Chapter 18.48 Residential Density Bonus Provisions.

18.48.010. Purpose.

These residential density bonus provisions are intended to implement state law in accordance with applicable sections of the California Government Code Section 65915 *et seq.*, as may be amended from time to time.

18.48.020. Application requirements.

A. Application. The applicant must identify in its application materials the number of bonus units and any incentives, concessions, waivers or reductions of development standards or parking ratios requested pursuant to Section 65915. This application shall be filed concurrently with other housing development applications.

B. Eligible Project. To be eligible for a density bonus, a proposed housing development, as defined in Government Code Section 65915(i), shall include a percentage of affordable units as described in Government Code Section 65915(b)(1). The housing development shall comply with Government Code Section 65915(c) and Chapter 14.04 of the Morgan Hill Municipal Code to assure the continued affordability of the units.

C. Documentation. An applicant shall provide to the City reasonable documentation as described in the development application to establish eligibility for a requested density bonus, incentives or concessions, waivers or reductions of development standards and parking ratios.

18.48.030. Density Bonus.

For eligible projects, consistent with the requirements of this chapter and Government Code Section 65915, the Development Services Director shall grant an increase in the number of dwelling units permitted in the proposed project. The amount of density bonus is based on the number, type, and degree of affordable units as specified in Government Code Section 65915(f), (g), and (h).

18.48.040. Concessions or Incentives.

An applicant may request one or more concessions or incentives, as defined in Government Code Section 65915(k), from the City as provided in Government Code Section 65915(d). The Development Services Director shall grant the requested concessions or incentives unless he or she makes one or more findings described in Government Code Section 65915(d)(1).

18.48.050. Waiver or Reduction of Development Standards.

An applicant may request waivers or reductions of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision 65915(b) at the densities or with the concessions or incentives permitted pursuant to Government Code Section 65915(e). The Development Services Director shall grant the requested waiver or reduction unless he or she makes a finding that the waiver or reduction would have a specific adverse impact as described in Government Code Section 65915(e)(1).

18.48.060. Parking Reductions.

An applicant may request a reduction in parking ratios as provided in Government Code Section 65915(p). The Development Services Director shall grant the requested waiver or reduction in parking ratios as described in Government Code Section 65915(p).

18.48.070. Review Authority.

A. The Development Services Director shall review and act on all density bonus, incentive/concession, waivers or reductions of development standards, and reduction in parking ratios requests.

B. If the Development Services Director recommends findings for denial for any request made pursuant to sections above for any reason, including denial based on the findings of a specific, adverse impact, as defined in Section 65589.5(d)(2), upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, the Development Services Director shall elevate the request to the Planning Commission for review and final decision.

18.48.080. Public notice and hearing.

Public notice of a pending action on a density bonus application shall be provided in compliance with Section 18.104.100 (Notice of Pending Action). The Development Services Director shall hold a noticed public hearing for a density bonus application only upon receiving a written request for a public hearing.

18.48.090. Affordability restriction.

Every project that receives a density bonus, incentive, concession, or waiver or reduction of development standards, must comply with Title 14 of the Morgan Hill Municipal Code and Government Code Section 65915, including but not limited to recording an affordability restriction.

Section 4. **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

<u>Section 5.</u> **Effective Date; Posting**. This Ordinance shall take effect thirty days after the date of its passage and adoption. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

This ordinance was introduced at a meeting of the City Council held on the _____ day of _____, 20__, and adopted at a meeting held on the _____ day of ________, 20__, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:	**APPROVED:**
____________________________	____________________________
MICHELLE BIGELOW, City Clerk	RICHARD CONSTANTINE, Mayor

CERTIFICATE OF THE CITY CLERK

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No.   , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the ____ day of ________, 2022.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: ________________________

____
MICHELLE BIGELOW, City Clerk