



Town of Moraga	AGENDA ITEM
Ordinances, Resolutions, Requests for Action	V. B.

Meeting Date: November 30, 2011

TOWN OF MORAGA

STAFF REPORT

**To: Honorable Mayor and Councilmembers
Planning Commission**

From: Shawna Brekke-Read, Planning Director

**Subject: Provide Direction to Planning Staff Regarding Planning Procedures,
General Plan, Zoning Ordinance, and Application to Designate
Rheem Planning Area a Priority Development Area**

Request

Receive public comment, discuss issues related to the planning process, the General Plan, and the Zoning Ordinance, and provide direction to staff.

Background

The Town's Zoning Ordinance was adopted in 1980, and the General Plan was adopted in 2002. Since that time, the Town has amended portions of the Zoning Ordinance, including addressing signs, density in multi-family residential zones, condominium conversions, subdivisions, home occupations, and design review. However, the Town has not undergone a major revision of the original 1980 zoning ordinance.

In the meantime, the Town has processed projects and completed studies and plans that have encountered issues, including:

- Retail stores (e.g., Orchard Supply Hardware and Dollar Tree) appealed to the Council;
- Moraga Corridor Streetscape Plan in 2005 recommending pedestrian and bicycle orientation and landscaping along Moraga Road;
- Moraga Center Specific Plan – adopted in 2010; and
- Economic Development Action Committee – active in 2011 and recommending
 - Changes to the zoning ordinance to more easily permit new retail uses;
 - Changes to the General Plan and Zoning Ordinance to allow mixed use in the Rheem planning area;
 - Pedestrian orientation in the Rheem planning area; and
 - Reconsideration of the uses permitted in the Moraga Center Specific Plan area.

1 **Discussion**

2
3 Based on the Town’s experiences and community input, staff has identified a number of
4 issues regarding the zoning ordinance and requests the Planning Commission and
5 Town Council provide feedback and direction, as follows:
6

7 **Lamorinda Winegrowers Association**

8
9 The Lamorinda Winegrowers Association is interested in expanding the wine industry
10 throughout the Lamorinda area. In Moraga, winegrowing (growing grapes for wine) is a
11 permitted use in many zoning districts, including
12

Zoning Districts That Allow Winegrowing/Agriculture (Attachment A)	
Zoning District	Permitted Land Use
All residential districts (1, 2, 3, 6 DUA)	Crop and tree farming with no on-site sales
Limited Commercial	Agriculture and buildings accessory thereto
Non-MOSO	Agriculture and buildings accessory thereto
MOSO	Agriculture and buildings accessory thereto
Institutional	Agricultural
Study District	Agriculture

13
14 In addition:

- 15
- 16 • Winemaking is allowed as a home occupation, provided certain criteria are met
- 17 (Attachment A);
- 18 • The Town has received interest from the winegrowers to allow boutique or small-
- 19 production wineries; and
- 20 • The Town has received complaints from the community about existing wineries.

21
22 Staff requests direction from the Town Council and Planning Commission and
23 recommends the Town staff work with the Lamorinda Winegrowers and Moraga
24 residents beginning in January 2012 to develop zoning definitions and a permitting
25 process that both streamlines the process to allow a winery and addresses community
26 concerns regarding their operations.
27

28 **Appeal Process**

- 29
- 30 • During its early meetings, the Economic Development Action Committee (EDAC)
- 31 expressed frustration with Moraga’s current appeal process;
- 32 • A member of the public may appeal any staff, Zoning Administrator, Design Review
- 33 Administrator, Design Review Board, or Planning Commission decision to the next
- 34 reviewing authority, in accordance with State law, allowing multiple appeals to higher
- 35 levels on the same application;
- 36 • Moraga’s zoning regulations allow the reviewing authority to waive the fee if it is
- 37 considered in the best interest of the Town;

- 1 • Moraga's zoning regulations also allow any member of the Planning Commission or
2 Town Council to appeal a decision without cost. In the case of the Dollar Tree, the
3 appeal hearings were estimated to cost the Town a significant amount of money in
4 staff time; in addition, the Town bore all costs for public noticing, including postage.
5 The applicant is likely to bear similar costs to respond to the appeal and defend their
6 previous ruling.
- 7 • Planning Commissioners and Town Councilmembers have discussed amending the
8 Town's appeal process, but no decisions have emerged.

9
10 Staff requests the Town Council and Planning Commission discuss alternatives to
11 amending the appeal process in the Moraga Municipal Code, and staff requests the
12 Town Council and Planning Commission provide direction.

13 Uses in Commercial Areas

- 14
- 15
- 16 • EDAC also discussed the zoning districts in the commercial areas.
- 17 • Currently, the Town has three commercial zoning districts and one commercial
18 overlay district, as follows:
 - 19
 - 20 ○ **Community Commercial** – Located on the west side of Moraga Road in the
21 Rheem planning area and in the Moraga Center planning area. EDAC
22 recommends two different zoning districts for these two commercial cores.
 - 23 ○ **Limited Commercial** – Located on the east side of Moraga Road in the Rheem
24 planning area. LC allows one permitted use: Agriculture. EDAC recommends
25 allowing a mixture of uses on both sides of Moraga Road through the Rheem
26 area, including pedestrian-oriented commercial uses and multiple family
27 residential.
 - 28 ○ **Suburban Office** – Located along Rheem Boulevard, west of Moraga Road, and
29 along Country Club in the Moraga Center planning area.
 - 30 ○ **Research and Development Overlay** – Staff is not aware of any areas with this
31 zoning district overlay.
- 32
- 33 • There are a number of concerns related to the uses in commercial areas, including
34 the following:
 - 35 ○ **McDonald's**. There are rumors that a McDonald's is coming to Moraga. Town
36 staff has received comments from members of the public who support and
37 oppose a new McDonald's.
 - 38 ➤ With the current zoning regulations, any restaurant and any food business
39 requires a Conditional Use Permit to operate in the commercial zoning
40 districts, including a McDonald's.
 - 41 ➤ Restaurants and auto-oriented uses are permitted uses in the 2010 Moraga
42 Center Specific Plan. (Note: The Specific Plan does not include a list of
43 conditional uses.)
 - 44
 - 45 ○ **Uses Permitted With Findings**. The Community Commercial and Suburban
46 Office districts list uses that are permitted, provided specified findings are made.
 - 47 ➤ If a proposal is exempt from CEQA, the planning director has the ability to
48 approve the use, provided the Planning Commission is noticed.
 - 49 A decision is appealable, which may contribute to the appeal issue

- 1 ➤ The findings allow for some discretion (Attachment A).
2 ➤ The process inhibits economic development, particularly for low-impact
3 commercial uses.
4

5 This procedure is not typical in zoning ordinances. Usually, a municipality's
6 zoning regulation for a zoning district includes the following:

- 7 ➤ Purpose statement – what is the zoning ordinance or particular district trying
8 to achieve.
9 ➤ Permitted uses – what uses are allowed by right, without a discretionary
10 permit. Many cities require a zoning permit, a certificate of occupancy, or a
11 business license to ensure new uses comply with zoning regulations.
12 ➤ Conditional uses – what uses are allowed if a use permit is issued; these
13 uses are discretionary, and the agency has the ability to approve or deny the
14 proposal, depending upon the conditions in the case, including location, type
15 of use, size, site layout, and/or any other condition a municipality deems
16 critical.
17 ➤ Special use standards – what special requirements apply to particular uses,
18 whether permitted or conditional.
19 ➤ Findings – what findings must be made to approve conditional use permits.
20

21 The above approach gives more certainty to property owners and applicants,
22 gives more discretion to the Planning Commission, provides more opportunity for
23 community input on findings and conditions of approval, and ensures the public
24 review process is meaningful.
25

26 With respect to commercial zoning ordinance changes, EDAC recommends

- 27 • Two separate zoning districts for the Rheem and Moraga Center;
28 • Future uses that encourage pedestrian-orientation and synergy with existing uses
29 (including the theater), rather than the broad range of uses listed in the Moraga
30 Center Specific Plan (for example, lumber yards, service stations, and other uses
31 that are both auto-oriented and land-intensive).
32

33 Staff requests direction from the Town Council and Planning Commission regarding the
34 Commercial zoning districts.
35

36 Disconnect Between General Plan, Input From Community Visioning and Zoning 37

38 One of the findings required for a permitted use includes the following:
39

40 "The use will not generate significant amounts of pedestrian and vehicular traffic that
41 will foster the flow of traffic between the proposed use and uses across abutting
42 streets."
43

44 The subtext appears to be two-fold: A new use cannot encourage pedestrian
45 orientation, and a new use cannot be compatible with other uses across the street.
46

47 This disconnect is one reason EDAC and staff suggest changes to the zoning
48 ordinance. The participants at the visioning workshops clearly stated a desire for
49 pedestrian-oriented uses in the Rheem area, including creating a pedestrian-friendly
50 corridor along Moraga Road.

1
2 Potential Disconnect Between the General Plan and the Grading Ordinance

- 3 • The General Plan requires Town Council review and approval of grading on slopes
4 of 25% or more, and its policies set parameters for creating new steep slopes.
5 • The Grading Ordinance defines grading such that some development can occur on
6 slopes of 25% or more without requiring a grading ordinance.
7 • The Town is processing an application for a project on a slope exceeding 50%, and
8 it appears a grading permit may not be necessary if the grading volumes fall below
9 50 cu. yds. and retaining walls are less than 3 feet in height.

10
11 Staff requests the Planning Commission and Town Council discuss ways to have the
12 grading ordinance and zoning ordinance capture the intent and spirit of the General
13 Plan. A potential change to both the zoning and grading ordinance could implement a
14 General Plan policy which calls for a hillside overlay district for slopes of 20% or more.
15 An overlay zoning district could be a mechanism for regulating how steep slopes are
16 developed, including requiring that development is clustered and high risk slopes
17 remain undeveloped.

18
19 Priority Development Area (PDA)

20 The Association of Bay Area Governments (ABAG) and the Metropolitan Transportation
21 Commission (MTC) are currently working on new guidelines for future grants. (Many of
22 the past grants were pass-through's that cities could simply request for transportation
23 projects. The new guidelines for One Bay Area grants will be much more competitive
24 and difficult to obtain in the future.) One of the criteria that will likely be adopted is that a
25 project be located in a Priority Development Area. Staff suggests Moraga submit an
26 application to ABAG to designate the Rheem planning area a PDA. Its proximity to two
27 BART stations and its opportunity for redevelopment could help the Town secure future
28 funds and create a livable, walkable neighborhood. Separately, the Contra Costa
29 County Transportation Authority is developing a pilot program for using smartphones for
30 ridesharing to BART stations. Moraga has been selected to participate in this pilot
31 program, further enhancing access to BART.

32
33 The Moraga Center Specific Plan area is currently identified as a Potential PDA. Staff
34 recommends the Planning Commission and Town Council authorize submitting an
35 application to designate the Rheem area as a PDA.

36
37 Other

38 The Town encounters other issues with the Municipal Code regarding development and
39 zoning, including the following:

- 40 • Signs;
41 • Development guidelines;
42 • Development review process for Planned Developments, including Conceptual,
43 General, and Precise Development Plans;
44 • MOSO findings identical for all increases in density;
45 • Temporary retail – seasonal sales; short-term promotions or satellite stores for larger
46 stores elsewhere;
47 • Mailboxes in rights-of-way; and
48 • Code enforcement.
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1
2 **Fiscal Impact**
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4 Not known. If the Rheem is approved as a PDA, then Moraga would be eligible for more
5 future grant funding. If the Town Council and Planning Commission request changes to
6 the Zoning Ordinance and General Plan, staff would complete the work as part of their
7 annual work program.
8

9 **Alternatives**
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- 11 1. Direct staff to make specified changes to the General Plan;
- 12 2. Direct staff to make specified changes to the Zoning Ordinance;
- 13 3. Direct staff to make specified changes to the General Plan and the Zoning
14 Ordinance;
- 15 4. Direct staff to submit an application for a PDA for the Rheem area;
- 16 5. Direct staff to do some combination of any or all of the above; or
- 17 6. Do nothing.
18

19 **Recommendation**
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21 Provide direction to staff. Staff also recommends the Town conduct annual updates to
22 the Zoning Ordinance to address these issues on a regular basis.
23

24 **Report reviewed by: Jill Keimach, Town Manager**
25

26 **Attachments:**

- 27 A. Excerpt from Moraga Municipal Code Title 8
28 • Definitions
29 • Home Occupation
30 • Findings Required for Permitted Use
31

ATTACHMENT A

EXCERPTS FROM MORAGA MUNICIPAL CODE

Definition (MMC § 8.04.020)

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

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

Home Occupations (MMC § 8.112.010 - 040)

8.112.010 - Findings and intent.

The council finds that one residing in a residential neighborhood should be able to engage in a home occupation so long as it is harmonious with and does not change the character and quality of environment of the area. It is the intent of this chapter to permit a home occupation as an incidental and accessory use in residential land use districts under conditions that will ensure that the use is and remains compatible with the residential character of the neighborhood.

(Prior code § 8-5101)

8.112.020 - When home occupation is permitted.

A home occupation is permitted in any residential land use district so long as:

- A. It is an accessory use only; and
- B. It is conducted in accordance with the performance and development standards set forth in Section 8.112.030.

(Prior code § 8-5102)

8.112.030 - Performance and development standards.

The establishment and conduct of a home occupation is permitted only if it meets the following requirements:

- A. There shall be no exterior evidence of the conduct of the home occupation, nor shall the home occupation be visible from off site;
- B. Only the residents of the dwelling unit may be employed in the home occupation;
- C. No sign or advertising may be displayed; house numerals shall be consistent in size and shape with those in use in the neighborhood; and no other evidence that the home occupation exists on the premises is permitted outside any structure;

- D. The nature and conduct of the home occupation must not be such as to change the principal character of the use of the dwelling unit involved or the residential character of the neighborhood;
- E. The required residential off-street parking shall be maintained;
- F. The home occupation shall not create off-street or on-street parking, vehicular traffic or pedestrian traffic which is greater than that normally associated with a strictly residential use of the premises on which it is located;
- G. Equipment which is visible or which creates audible interference in radio or television receivers or causes fluctuations in line voltage outside the dwelling unit is prohibited.

(Prior code § 8-5103)

8.112.040 - Maintenance of mailing address and telephone listing for business purposes.

A person may maintain a mailing address and telephone listing for business purposes in a residential land use district.

Community Commercial Excerpt (MMC § 8.36.020)

8.36.020 Uses permitted subject to findings.

- A. Each of the following uses is a permitted use in this district if it is determined that the use meets the criteria set forth in subsection B of this section:
 - 1. The carrying on of a retail business, except for a restaurant or other business where food or beverages are sold or distributed, in which all the sales, demonstrations, displays, services and other activities of the retail business (except off-street parking) are conducted within an enclosed building;
 - 2. Professional office such as one pertaining, but not limited to, the practice of law, architecture, dentistry, medicine, engineering or accounting;
 - 3. Administrative, executive or editorial offices;
 - 4. Business office for insurance, real estate or investment broker and its representatives;
 - 5. Studio and gallery for arts and crafts, music, dance or photography;
 - 6. Other uses found by the planning commission to be consistent with the purpose of the district and compatible with surrounding existing uses.
- B. Before a use listed in subsection A of this section is permitted in this district, the planning commission must determine that:
 - 1. The use will not generate significant amounts of pedestrian and vehicular traffic that will foster the flow of traffic between the proposed use and uses across abutting streets;

Attachment A – Excerpts from Moraga Municipal Code

2. The use is compatible in land use and traffic characteristics and design with other uses directly affected by the proposed use;
3. Any adverse characteristics of the use can be mitigated to the extent necessary to make the use compatible with neighboring uses;
4. The use will be within a building or space enclosed by approved fencing, landscaping or other buildings;
5. The use will not generate noise levels in excess of fifty-five (55) dba during the daytime hours, or fifty (50) dba during the nighttime hours;
6. The use will not create an excessive public economic problem;
7. The use will not generate glare, electrical interference, odor, vibration, brilliant light, dust, smoke, fumes or have other characteristics that are otherwise offensive to the senses to the extent that there is interference with the development or enjoyment of other property in the vicinity;
8. The hours of operation will not foster conditions detrimental to the neighborhood or town.