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Office of the City Attorney  
John A. Russo  
City Attorney

June 27, 2006

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HONORABLE CITY COUNCIL

**Re: Items 14.4, 14.4.1 and 14.4.2 – Inclusionary Housing Ordinance**

President De La Fuente and Members of the City Council:

At the June 27, 2006 meeting, the City Council will consider adopting an inclusionary housing ordinance. Before the Council are several proposals.

- An ordinance that would amend the Planning Code (Item 14.4)
- Amendments to the Proposed Ordinance from Councilmember Brunner that would amend the Oakland Municipal Code (Item 14.4.1)
- An amendment proposed by Councilmember Reid (Item 14.4.2) as follows:

“Add new section 12; renumber existing Section 12 to section 13

Section 12. This ordinance shall not apply in any redevelopment project area where more than 75% of the land within that redevelopment project area, as that area is designated as of the date of the adoption of this ordinance, is developed pursuant to a master plan of development that satisfies the affordable housing production requirements of Health and Safety Code section 33413.”

The amendment proposed by Councilmember Reid references the Health and Safety Code section which has affordable housing requirements. The inclusionary obligations in the proposed ordinances and the affordable housing requirements under Health and Safety Code Section 33413 are different in a number of significant ways, including but not limited to:

1. First, Section 33413, unlike the ordinances, does not necessarily require that affordable units be set aside in each private, market rate project; the obligation is imposed on the redevelopment agency, not developers, to be met project area-wide over a 10 year period.

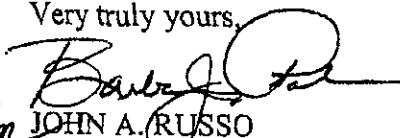
2. Second, while both Section 33413 and the proposed ordinances generally require 15% of units to be affordable, the affordability levels are different.

Section 33413 requires that 9% of residential units be affordable to low to moderate incomes (i.e., 120% of area median income), and 6% be affordable to very low incomes (i.e., 50% of area median income), whether units are rental or ownership.

Councilmember Brunner's amendments require that 9% of rental units be affordable to low incomes (i.e. 80% of area median income) and 6% to very low incomes, while all ownership inclusionary units are affordable to households at 110% of area median income.

3. Third, Section 33413 allows units that receive City or Agency subsidy to be counted toward meeting the affordable housing requirement. Generally, the proposed ordinances do **not** permit units receiving any City or Agency subsidy to be counted toward a developer's inclusionary requirement.
4. Fourth, the laws have different requirements for providing affordable units off-site. Under Section 33413, twice as many affordable units must be provided if the units are off-site (i.e., instead of 15%, there is a 30% requirement if the units are off-site.) The ordinances require that off-site affordable units be provided at a 20% level rather than a 15% level.

Very truly yours,

  
for JOHN A. RUSSO  
City Attorney

Attorney Assigned:  
Daniel Rossi

Document # 376273

**June 7, 2006**

<b>5</b>	<p><b>Location:</b> Affects Entire City</p> <p><b>Proposal:</b> Public Hearing to Consider Adopting Proposal an Inclusionary Housing Ordinance entitled: “AN ORDINANCE ADDING CHAPTER 17.109 TO THE OAKLAND PLANNING CODE TO ESTABLISH AN INCLUSIONARY HOUSING REQUIREMENT AND ESTABLISH TWO NEW HOMEOWNERSHIP PROGRAMS FOR OAKLAND TEACHERS, MAKING RELATED AMENDMENTS TO THE OAKLAND PLANNING CODE, AMENDING SECTION 15.68.100 OF THE OAKLAND MUNICIPAL CODE, AND AMENDING THE MASTER FEE SCHEDULE TO ESTABLISH AN INCLUSIONARY HOUSING IN-LIEU FEE” (ZTO06-239)</p> <p><b>Planning Permits Required:</b> This ordinance, if adopted would be incorporated into the Zoning Code.</p> <p><b>Planning Commission Actions:</b> The Planning Commission’s action on this ordinance is a recommendation to the City Council. The City Council has the final authority to adopt the ordinance.</p> <p><b>Environmental Determination:</b> The following environmental documentation is being relied upon to meet CEQA requirements: (1) reliance upon the Environmental Impact Report prepared for the Land Use and Transportation Element of the General Plan that was certified by the City Council on March 24, 1998; (2) reliance upon the Environmental Impact Report prepared for the Estuary Policy Plan that was certified by the City Council on June 8, 1999; (3) reliance upon the Mitigated Negative Declaration prepared and approved for the Housing Element of the General Plan on June 14, 2004; (4) CEQA Guidelines section 15061(b) (3); and (5) CEQA Guidelines section 15183.</p> <p><b>For further information:</b> Contact Jeffrey Levin, Housing Policy and Programs Coordinator at 238-6188, or by e-mail at <a href="mailto:jplevin@oaklandnet.com">jplevin@oaklandnet.com</a></p>
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**SUMMARY**

In April, 2006, the City Council’s Community and Economic Development Committee (CEDC) held a public hearing to discuss the adoption of a city-wide Inclusionary Housing Ordinance. City staff was directed to prepare a proposed Inclusionary Zoning Ordinance based on the proposal announced by Councilmembers Brunner, De La Fuente, and Quan on April 24, 2006.

Over 100 cities and counties throughout California have adopted such an ordinance. The CEDC was basing its action on the continued strength of the City’s housing market and the pace of new development of market rate housing. This ordinance will require projects of 20 units or more to set aside 15 percent of the total units for sale or rent to households that fall within certain income restrictions. These units

would be income-restricted 55 years for rental housing and 45 years for ownership housing. The ordinance (please refer to Attachment A) also contains provisions to meet the inclusionary requirement by providing housing off-site and through the payment of an in-lieu fee. A summary of the key provisions of the ordinance is contained in Attachment B.

The proposed Inclusionary Housing Ordinance will add another component to the City's wide range of programs designed to address the affordable housing needs of Oakland's low and moderate income residents, thus meeting an important General Plan Housing Element objective. While inclusionary housing can not meet the full spectrum of the City's affordable housing needs, it will work well as a complement to other affordable housing efforts including development of new and preservation of existing affordable housing; first-time homebuyer assistance; rehabilitation loans for homeowners; and the public housing and Section 8 programs operated by the Oakland Housing Authority. By requiring developers of market-rate housing to include housing affordable to low and moderate income households, the City can promote the goal of providing economic integration in neighborhoods experiencing substantial development. Inclusionary housing can also allow the City to focus its own affordable housing funds on extremely low and very low income households who have the greatest housing needs, but also require affordability levels that are generally below what is economically feasible for inclusionary zoning. Staff recommends that the Planning Commission open the public hearing and take comments on the proposal, review the draft ordinance and then forward any recommendations to the City Council for their consideration. The CEDC is scheduled to consider this proposal at their June 13, 2006 meeting with a full City Council hearing scheduled for June 20, 2006.

#### **DETAILED DESCRIPTION OF PROPOSED INCLUSIONARY ORDINANCE**

The proposed ordinance is consistent with best practices in other California jurisdictions. It includes the following key provisions:

##### Applicability

The policy would apply to any development project that creates 20 or more housing units. Lofts and live/work units are included. The ordinance will not apply to projects that secure "vested rights" to develop prior to May 1, 2007. Under current California law, a project acquires "vested rights" in one of three ways: (1) the developer and the city enter into a development agreement pursuant to the California Government Code for the project, (2) the developer obtains a vesting tentative map under the California Government Code for the project, or (3) the developer obtains a building permit for the project and has performed substantial work and incurred substantial liabilities in good faith reliance on the permit.

##### Exemptions

Certain types of development projects would be exempt from the ordinance:

- *Transit village developments* (i.e., projects within 1,000 feet of a BART station) that are subject to Disposition and Development Agreements or Owner Participation Agreements with the City or Agency.
- *Affordable housing projects* that are funded through the City's competitive process for funding affordable housing (the annual Notice of Funding Availability or "NOFA" process). These projects typically provide much higher percentages of affordable housing and deeper income targeting than would be required by the inclusionary housing program.

- *Affordable rental housing projects* with funding other than City or Agency affordable housing funds, provided at least 40 percent of the units are restricted at affordable rents to households with incomes at less than 60 percent of median, for a period of at least 55 years.
- *The reconstruction or rebuilding of housing units damaged or destroyed* by natural disaster, provided construction is started within four years and completed within six years of the damage.
- *Rehabilitation of existing housing units*, unless the estimated cost of rehabilitation is more than 75 percent of the estimated replacement cost after rehabilitation, in which case the project would be treated as new construction.
- *Conversion of existing rental units to condominiums* (unless it entails substantial rehabilitation that qualifies as new construction as described above).

#### Inclusionary Requirement

Projects subject to the ordinance would be required to provide 15 percent of the units as affordable housing, using income and rent or sales price limits consistent with California Redevelopment Law. Use of these definitions ensures that inclusionary housing units can be counted toward the affordable housing production requirements for the City's redevelopment project areas.

#### Inclusionary Units Must be Comparable to Market Rate Units

Inclusionary units must generally be comparable to market rate units in a project and should be distributed throughout the development. Inclusionary units must be developed in tandem with the market rate units.

#### Affordability Restrictions

Occupancy of inclusionary rental housing would be restricted to low income households with incomes less than 80 percent of area median income (as noted below, consistent with California redevelopment law, rents will be set at levels affordable to households with incomes of 60 percent of median income).

Ownership housing would be restricted to moderate income households (maximum income of 120 percent of median income), and each development would be required to have an average income limit of 100 percent of median income.

These are maximum incomes; based on experience in City-assisted developments, the units can and most likely will be occupied with households with incomes below these limits.

The current income limitations are set forth in the following table:

<b>INCOME LIMITS, ADJUSTED FOR HOUSEHOLD SIZE</b>						
<b>INCOME LEVEL</b>	<b>One Person</b>	<b>Two Persons</b>	<b>Three Persons</b>	<b>Four Persons</b>	<b>Five Persons</b>	<b>Six Persons</b>
<b>60% of Area Median Income</b>	\$35,220	\$40,200	\$45,240	\$50,280	\$54,300	\$58,320
<b>80% of Area Median Income (Low Income)</b>	\$46,350	\$53,000	\$59,600	\$66,250	\$71,550	\$76,850
<b>100% of Area Median Income (Median Income)</b>	\$58,700	\$67,000	\$75,400	\$83,800	\$90,500	\$97,200
<b>120% of Area Median Income (Moderate Income)</b>	\$70,440	\$80,400	\$90,480	\$100,560	\$108,600	\$116,640

Length of Affordability Restrictions

Rental units would be required to remain affordable for 55 years.

Ownership units would be required to remain affordable for 45 years (except in some cases units made available to Oakland teachers; see below).

Affordable Rents

All inclusionary rental units would be required to have rents that do not exceed 30 percent of 60 percent of area median income, which is consistent with State law definitions of housing affordable to low income households.

Based on current median income, the maximum allowable rents would be as follows (and must be further adjusted downwards by an allowance for utilities paid by the tenant).

<b>Maximum Allowable Rents</b>				
<b>0 Bdrm</b>	<b>1 Bdrm</b>	<b>2 Bdrm</b>	<b>3 Bdrm</b>	<b>4 Bdrm</b>
\$880	\$942	\$1,131	\$1,307	\$1,458

These rents are substantially below the rents that are projected for many of the market rate developments currently proposed or underway in the City.

Affordable Sales Prices

Sales prices will be established using formulas prescribed by California redevelopment law to determine affordable housing cost, which takes into account mortgage payments, hazard insurance, taxes, homeowners' association dues, utilities and an allowance for maintenance. Currently these formulas result in the following sales prices for households earning no more than 100 percent of median income.

Maximum Allowable Sales Prices				
0 Bdrm	1 Bdrm	2 Bdrm	3 Bdrm	4 Bdrm
\$143,290	\$170,970	\$198,983	\$226,997	\$249,340

These prices are substantially lower than market prices for new ownership units. It should be noted that in practice, based on underwriting practices of most mortgage lenders, these sales prices are affordable to households at incomes less than median income. Experience with the City’s own assisted homeownership developments shows that units are typically purchased by families with incomes below the maximum income limit.

In addition, households with incomes less than 80 percent of median income could use the City’s first-time homebuyer assistance program to purchase inclusionary ownership units.

Alternative: Off-Site Development

Developers could also meet the inclusionary requirement by building a higher percentage of units (20 percent) on some other site in the City. Off-site units would be required to be comparable to any units that would be required on site.

Alternative: In-Lieu Fee

Developers could choose to pay an in-lieu fee equal to the full amount of the “financing gap,” defined as the difference between the total cost to develop comparable units off site and (a) for ownership housing, the affordable sales prices, or (b) for rental housing, the amount of debt that can be supported by affordable rents. The fee would be required to be paid for the same number of units as would be required if the developer built off-site inclusionary units (i.e., 20 percent of the total units in the market-rate project).

The ordinance requires that the City hire a consultant to conduct and complete a study by December 31, 2006 to establish the appropriate fee amount. The fee would be indexed annually to increases in residential construction costs, and the City could conduct new studies periodically as needed to recalibrate the fee.

Until the study is completed, the proposed ordinance sets an initial fee based on staff’s estimate of the “financing gap” based on projects recently funded under the City’s annual affordable housing funding competition.

Initial In-Lieu Fee Pending Completion of Study	
Unit Size	In-Lieu Fee
0 Bedroom	\$ 195,000
1 Bedroom	\$ 240,000
2 Bedroom	\$ 265,000
3 Bedroom	\$ 305,000
4 Bedroom	\$ 315,000

Use of In-Lieu Fees

In-lieu fees would be deposited to the Affordable Housing Trust Fund first established by the Jobs/Housing Impact Fee Ordinance in July 2002.

Fees would be reserved for development of housing projects affordable to low and very low income households, subject to approval by the City Council, with a preference for units serving very low income households (less than \$41,900 per year for a family of four).

Twenty percent of in-lieu fees would be set-aside for a new Teacher Mortgage Assistance Program described below, which would be affordable to households up to 100 percent of median income.

A portion of the in-lieu fees could also be used to pay reasonable costs of administering, monitoring and enforcing the inclusionary housing program.

#### Prohibition on Use of Affordable Housing Funds

The ordinance prohibits the use of federal, state or local affordable housing funds to provide inclusionary units. Such funds could be used to provide additional affordable units above the minimum required by the ordinance, or to provide a deeper level of affordability than that required by the ordinance. Rental projects whose sole source of affordable housing funds is tax-exempt bond proceeds or 4 percent low income housing tax credits would not be subject to this limitation provided that at least 20 percent of the units are rented to very low income households (less than \$41,900 per year for a family of four) at an affordable rent.

#### New Teacher Homeownership Programs

The ordinance provides for the creation of two new programs designed to provide homeownership opportunities as an incentive for teachers to remain working within the Oakland Unified School District (OUSD).

The first program would require 20 percent of most ownership inclusionary units, whether built on-site or off-site, to be marketed to Oakland teachers. The units would be sold initially at the same affordable prices described above. If the teacher continues working in the OUSD for the next five years, the sales price restrictions will be removed, and in years six through ten the teacher/homeowner would receive an increasing share of the appreciation in the market value of the unit. After 10 years, the City would be repaid only the amount that represents the initial gap between market rate and the affordable sales price, with all of the increase in market value going to the owner.

California redevelopment law does not permit ownership units that are not subject to the full 45-year resale restrictions from being counted towards the Agency's affordable housing production requirements. As a result, the requirement for teacher housing would apply only to on-site or off-site inclusionary units built outside those redevelopment project areas that have affordable housing production obligations.

The second program would use 20 percent of the in lieu fee revenues to fund first time homebuyer loans to assist teachers purchase of units anywhere in the City. The loans would be structured with provisions similar to those just described for construction of teacher housing.

Both programs differ from existing City homebuyer programs because (a) they would provide greater amounts of financial assistance (up to the entire "financing gap" as described in the discussion on in-lieu fees), and (b) after ten years there would be no interest or shared appreciation due the City.

These programs are intended to provide financial incentives for teachers to remain in the OUSD and to reduce the rate of teacher turnover in the District.

#### Implementation, Monitoring and Enforcement

The ordinance contains provisions that would authorize staff to implement the program, monitor the affordable housing units for ongoing compliance, and enforce the requirements for long term affordability.



Developers will be required to submit an inclusionary housing plan as part of their first application for a development-related permit from the City. The permit cannot be approved unless the inclusionary housing plan is approved. The inclusionary obligations will be enforced through regulatory agreements, resale controls, or similar restrictions recorded against the inclusionary housing units.

The City would be able to take a range of actions to enforce the ordinance, including revoking development approvals and assessing a fine equal to the full amount of the in-lieu fee otherwise required for the project.

The proposed ordinance also allows third parties (including members of the public) to sue project owners if they fail to comply with the requirements of the ordinance.

Finally, the ordinance grants the City Administrator the authority to develop regulations and procedures for implementing the ordinance.

## **BACKGROUND**

### Previous City Efforts to Provide Inclusionary Housing

The issue of inclusionary zoning and suggestions that Oakland adopt such a policy has come before the City Council on a number of occasions, including:

- 1) The Final Report of the Housing Development Task Force, which was adopted by the City Council in July 2000, included a recommendation to adopt an inclusionary zoning ordinance.
- 2) On May 15, 2001, staff presented the City Council with an overview of inclusionary zoning programs and the issues associated with the feasibility of implementing such a program in Oakland.
- 3) In December 2003, staff provided the City Council with a summary of key findings of a comprehensive survey of inclusionary zoning published by the Non-Profit Housing Association of Northern California (NPH) and the California Coalition for Rural Housing (CCRH). That study is the most thorough study of inclusionary zoning in California conducted in over a decade. While NPH is currently working to update the data, it remains the most definitive source of information regarding existing inclusionary policies and programs in cities and counties throughout the state.
- 4) On April 25, 2006, staff presented to the Community and Economic Development Committee an informational report regarding an inclusionary housing policy proposed by the Oaklanders for Affordable Housing Coalition (OAHC). A copy of that report is included as Attachment C. At that time, the Committee directed staff to return with an ordinance to implement a proposal that was announced on April 24, 2006 by Councilmembers Brunner, De La Fuente and Quan. The draft ordinance now before the Commission is the result of this direction.

### Inclusionary Housing Programs in California

Inclusionary housing programs have been in place in California for over 30 years. As of March 2003, 107 jurisdictions had some kind of inclusionary housing program, and the rate of adoption has increased over the past ten years as cities and counties have sought innovative ways to meet their affordable housing needs.

Many jurisdictions, particularly the larger cities, use inclusionary housing programs to complement and augment their other affordable housing efforts. Typically, inclusionary programs do not meet the full spectrum of needs. Other programs and funding sources, such as Federal grant funds and redevelopment agency housing set-aside funds, are used to provide deeper subsidies to develop and preserve housing affordable to income levels lower than are feasible to reach through inclusionary programs.

While considerable variation exists in these programs, there are some common themes:

- Half of all programs require at least 15 percent of units to be affordable; including roughly one-fourth that require 20 percent or more.
- Most programs target low income (50% to 80% of median income, or between \$38,000 and \$60,000 for a three-person household) and moderate income (80% to 120% of median income, or between \$60,000 and \$90,000 for a three-person household). Just under half of all programs provide some targeting to very low income households (30% to 50% of median income, or between \$23,000 and \$38,000 for a three-person household). Targeting to extremely low income households (less than 30% of median income, or less than \$23,000 for a three-person household) is not commonly found.
- Rental housing is generally targeted to very low and low income, while ownership housing is generally targeted to low and moderate income.
- Most jurisdictions require long-term affordability covenants. Many cities have amended their programs to ensure that projects remain affordable for at least as long as required for affordable housing under California redevelopment law (45 years for homeownership, 55 years for rental).
- Many jurisdictions exempt smaller projects (ranging from 3 to 10 units) from inclusionary requirements, while others require in-lieu fees to be paid for smaller projects. Some jurisdictions require larger percentages of affordable housing for larger development projects.
- Many jurisdictions require that affordable units be built at the same time as market rate units.
- Most programs provide for alternatives to on-site construction within the market-rate project. Common alternatives include off-site construction, land dedication, and payment of in-lieu fees.
- Most jurisdictions provide incentives to developers to help offset the cost of providing affordable units. The most common incentive is density bonuses that allow projects to exceed the allowable density in order to provide affordable units by reducing the per unit costs of development. Other incentives include fast track processing; direct subsidies; design flexibility and relaxation of development standards; and fee waivers, reductions or deferrals. In some jurisdictions, inclusionary units may be of a smaller size or may require only standard grade finishes and features to reduce their cost. Some larger cities, such as San Diego and San Francisco, do not provide incentives.

## GENERAL PLAN AND ZONING ANALYSIS

The proposed ordinance would meet the following key objectives and policies of the General Plan:

### *Housing Element:*

**Goal 1:** Provide Adequate Sites Suitable for Housing for all Income Groups

**Goal 2:** Promote Development of Adequate Housing for Low and Moderate Income Households, including affordable housing within market rate projects (policy 2.4) and promoting an equitable distribution of affordable housing throughout the community (policy 2.22).  
If adopted, the ordinance would become a part of the City's zoning ordinance regulations.

### *Land Use and Transportation Element:*

Policy N.4: Actively encourage the provision of affordable housing throughout the Bay Area.

## KEY ISSUES AND IMPACTS

The City faces a number of inter-related affordable housing issues that will be addressed in part by the proposed ordinance. These are presented in the following section of this report.

### Unmet Housing Needs

The City's Consolidated Plan for Housing and Community Development identifies substantial housing needs of existing residents, particularly those with very low, low and moderate income. Over 30,000 very low and low income households experience housing problems including overcrowding, substandard conditions and overpayment (housing costs greater than 30 percent of household income).

### Housing to Accommodate New Growth

The City's General Plan Housing Element identifies projected housing needs for the period 1999 through 2006 (the state has recently extended the time frame by an additional two years through mid-2008). The City's Regional Housing Need Allocation calls for production of over 7,700 units. Over 3,000 of these units must be affordable to very low and low income people. While the State's Housing Element law does not require the City to build these units, it does require that the City ensure that there are adequate sites with appropriate zoning to meet this need. The law also requires that the City remove public policy barriers and develop and implement affirmative programs to meet its housing needs, including the need for affordable housing. The inclusionary ordinance would add to the set of existing tools available to meet this objective.

### Redevelopment Law Requirements

Under California Redevelopment Law, redevelopment project areas adopted after 1976 are subject to a requirement to include affordable housing in the project areas. A project area is not the particular site proposed for a project but rather a specific geographic area that has been adopted by the City Redevelopment Agency where redevelopment obligations and authority applies. These requirements mandate that 15 percent of all housing units newly constructed or substantially rehabilitated in the project area over a 10-year period must be affordable and targeted to low to moderate income households, with at least 6 percent of units targeted to very low income households. The law requires that affordable units be built within the project area, but does not necessarily require that units be included within each market

rate project in the project area. (It is possible to provide the units outside the project area, but twice as many units (30 percent) are required in that case.) Oakland has a number of redevelopment project areas subject to these requirements: Coliseum, Broadway/MacArthur/San Pablo, Oakland Army Base, West Oakland, Central City East and Oak Knoll. Many redevelopment agencies use inclusionary housing programs to meet this requirement, and the redevelopment plans for these project areas all authorize the Agency to impose inclusionary requirements on market rate projects to meet the area production requirements.

At present a number of large residential development projects are either underway or proposed in these areas. These projects collectively contain over 7,500 housing units, and will generate an obligation for production within these redevelopment areas of over 1,000 units of affordable housing, including nearly 500 units for very low income households.

Promotion of Mixed-Income Development

Inclusionary requirements are specifically designed to encourage residential development that includes housing for a range of income levels. Inclusionary requirements for redevelopment areas are applied to the entire redevelopment area, and inclusionary zoning laws require that the City establish provisions for assuring that projects meet mixed income objectives within individual developments. Inclusionary housing can serve as an important mechanism for providing fair housing opportunities for minorities outside areas of racial concentration and can help promote a deconcentration of low income people by providing opportunities to live in neighborhoods that would otherwise consist largely of middle- and upper-income households.

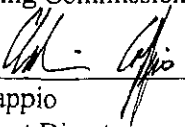
**PLANNING COMMISSION RECOMMENDED ACTION:**

- 1) To open the public hearing and take public comments pertaining to the proposed inclusionary housing ordinance.
- 2) To close the public hearing.
- 3) To review the proposed ordinance and provide any comments, concerns and recommendations to the City Council for their consideration.
- 4) To direct staff to provide Planning Commission comments and recommendations at the June 13, 2006 CEDC hearing.

Prepared by

  
\_\_\_\_\_  
Jeffrey P. Levin, Housing Policy and Programs Coordinator  
Housing & Community Development Division

Approved for forwarding to the  
City Planning Commission:

  
\_\_\_\_\_  
Claudia Cappio  
Development Director

**ATTACHMENTS:**

- A. Draft Inclusionary Ordinance
- B. Summary of Inclusionary Ordinance Provisions
- C. April 25, 2006 Staff Report to Community and Economic Development Committee

APPROVED AS TO FORM AND LEGALITY:

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DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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AN ORDINANCE ADDING CHAPTER 17.109 TO THE OAKLAND PLANNING CODE TO ESTABLISH AN INCLUSIONARY HOUSING REQUIREMENT AND ESTABLISH TWO NEW HOMEOWNERSHIP PROGRAMS FOR OAKLAND TEACHERS, MAKING RELATED AMENDMENTS TO THE OAKLAND PLANNING CODE, AMENDING SECTION 15.68.100 OF THE OAKLAND MUNICIPAL CODE, AND AMENDING THE MASTER FEE SCHEDULE TO ESTABLISH AN INCLUSIONARY HOUSING IN-LIEU FEE

**WHEREAS**, the City of Oakland adopted a Consolidated Plan for Housing and Community Development dated May 13, 2005 (the "Consolidated Plan"), which found that there is a severe shortage of affordable housing in Oakland; and

**WHEREAS**, the Consolidated Plan found that persons who live and/or work in the City have serious difficulty locating housing at prices they can afford; and

**WHEREAS**, the Consolidated Plan found that existing local, state and federal resources are insufficient to meet the affordable housing need; and

**WHEREAS**, the Association of Bay Area Governments, through its Regional Housing Needs Allocation, estimated that based on anticipated economic growth, the City would experience demand for 3,207 new housing units affordable to low and very low income households between 1999 and 2006; and

**WHEREAS**, the City of Oakland adopted a Housing Element to the General Plan, dated June 14, 2004 (the "Housing Element"), which identified a plan to accommodate the City's share of the housing needs of persons at all income

levels including strategies and programs to maintain and expand the supply of housing affordable to very-low, low and moderate income households; and

**WHEREAS**, despite substantial investments of Federal HOME funds and funding from the Redevelopment Agency's Low and Moderate Income Housing Fund, the City has not been able to produce all the units called for in the Regional Housing Needs Allocation; and

**WHEREAS**, the California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.) requires that in redevelopment project areas adopted on or after January 1, 1976, redevelopment agencies must ensure that at least 15 percent of newly constructed and substantially rehabilitated housing development be affordable to very-low, low and moderate income households; and

**WHEREAS**, rising land prices in Oakland have been a key factor in preventing development of new affordable housing; and

**WHEREAS**, new housing construction in the City that does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land and increasing the price of remaining residential land; and

**WHEREAS**, the Final Report of the Housing Development Task Force, which was adopted by the City Council in July 2000, included a recommendation to adopt a residential inclusionary zoning ordinance; and

**WHEREAS**, on May 15, 2001, staff presented the City Council with an overview of residential inclusionary housing and the issues associated with the feasibility of implementing such a program in Oakland; and

**WHEREAS**, on December 9, 2003, staff provided the City Council with a summary of key findings of a comprehensive survey of inclusionary housing published in 2003 by the Non-Profit Housing Association of Northern California (NPH) and the California Coalition of Rural Housing (CCRH); and

**WHEREAS**, the City wants to balance the burden on private property owners with the demonstrated need for affordable housing in the City by joining over 100 California cities that currently have some form of inclusionary housing requirement and apply an inclusionary housing requirement to all covered development projects containing 20 housing units or more; and

**WHEREAS**, an inclusionary housing requirement will serve as one component of the City's overall housing strategy and will complement other affordable housing efforts, including preservation of existing assisted housing, development of new assisted housing with public subsidies, first-time homebuyer assistance, rehabilitation loans for low income homeowners and the public housing and Section 8 programs operated by the Oakland Housing Authority and targeted to the very lowest income households; and

**WHEREAS**, the Inclusionary Housing Ordinance will provide rental units affordable to households earning no more than 80 percent of area median income and ownership units affordable to moderate income households with an average income of no more than 100 percent of area median income, thus allowing the City to target its limited affordable housing dollars to extremely low, very low and low income households who have the greatest housing needs and require the greatest subsidies; and

**WHEREAS**, City staff performed a preliminary affordable housing gap analysis to determine the appropriate in-lieu fee for the inclusionary housing ordinance; and

**WHEREAS**, on April 25, 2006, the Community and Economic Development Committee received and considered a report on inclusionary housing and directed staff to prepare a draft Inclusionary Housing Ordinance based on the recommendations of Council President Ignacio De La Fuente, Councilmember Jane Brunner and Vice Mayor Jean Quan; and

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**WHEREAS**, the City Council has received and considered the staff report accompanying this Ordinance; now therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

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**SECTION 1.** This Ordinance shall be known as the "Inclusionary Housing Ordinance."

**SECTION 2.** Chapter 17.109 is hereby added to the Oakland Planning Code to read as follows:

**Chapter 17.109**

**INCLUSIONARY HOUSING REQUIREMENTS**

**17.109.010 Title, Purpose, Applicability**

*This chapter shall be known as the Inclusionary Housing Requirements. The purpose of this chapter is to establish an inclusionary housing program for the City of Oakland to ensure that development projects that include market rate housing units provide units affordable to households of low and moderate income distributed throughout the City's various neighborhoods. These requirements shall apply to projects that construct or establish housing units in all parts of the City.*

**17.109.020 Definitions**

As used in this chapter, the following terms have the following meanings:

"AMI" or "area median income" means the area median income for the Oakland area as determined by the California Department of Housing and Community Development pursuant to California Health and Safety Code Section 50093.



"Affordable housing" means a housing unit that is provided at an affordable rent to low income households, or sold at an affordable sales price to moderate income households with an average income of not more than 100% of area median income as further described in Section 17.109.100 (Affordability Level and Housing Cost) .

"Affordable housing cost" means an annual housing cost that does not exceed 35 percent of the maximum allowable income specified in Section 17.109.100 (Affordability Level and Housing Cost), adjusted for family size appropriate to the unit pursuant to California Health and Safety Code Section 50052.5, and is not less than 28 percent of the actual gross income of the household. "Housing cost" shall include those items set forth in 25 California Code of Regulations Section 6920.

"Affordable rent" shall be as defined in California Health and Safety Code Section 50053(b)(3), and its implementing regulations.

"Affordable sales price" means the sales price of a housing unit that would permit a household to obtain the unit at an affordable housing cost.

"Agency" means the Redevelopment Agency of the City of Oakland.

"City" means the City of Oakland.

"City Administrator" means the City Administrator of the City of Oakland or his or her designees.

"Covered development project" means any facility that includes the construction or establishment of one or more housing units. A change in tenure (rental or ownership) shall not in itself constitute construction or establishment of a housing unit.

"Housing unit" means a living unit within the meaning of Section 17.090.040 of the Planning Code, a joint living and work quarter within the meaning of Section 17.202.190B of the Planning Code, or a joint residential-oriented living and working quarter within the meaning of Section 17.102.195B of the Planning Code.

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

"In-lieu Fee" means a fee to be paid in the amount described in Oakland's Master Fee Schedule as an alternative to providing on-site or off-site inclusionary units.

"Inclusionary housing plan" means that inclusionary housing plan required under Section 17.109.170 (Inclusionary Housing Plan).

"Inclusionary unit" means a housing unit that must be offered at an affordable rent to low income households, or sold at an affordable sales price to moderate income households, as further specified in Section 17.109.110 (Affordability Level and Housing Cost).

"Low income household" shall be as a "lower income household" is defined in California Health and Safety Code Section 50079.5 and its implementing regulations.

"Market rate units" means housing units constructed in the principal project that are not subject to sales or rental restrictions.

"Moderate income household" shall be as "persons and families of low or moderate income" is defined in California Health and Safety Code Section 50093 and its implementing regulations.

"Off-site unit" means an affordable housing unit constructed pursuant to this chapter on a site other than the site of the principal project.

"On-site unit" means an affordable housing unit constructed pursuant to this chapter on the site of the principal project.

"Ownership unit" means a housing unit that serves or is intended to serve as the primary residence of the owner or owners.

"Principal project" means a covered development project on which a requirement to provide inclusionary units is imposed.

"Project applicant" means any individual, person, firm, partnership, association, joint venture, corporation, limited liability company, entity, combination of entities or authorized representative thereof, who undertakes, proposes or applies to the City for any covered development project.

"Redevelopment project area" means an area governed by a redevelopment plan pursuant to the California Community Redevelopment Law (California Health and Safety Code 33000, et seq.).

"Redevelopment project areas with housing production requirements" means redevelopment project areas subject to the production requirements set forth in California Health and Safety Code Section 33413(b).

"Site" means a parcel or parcels of land which is or may be developed or utilized for a covered development project.

"Transit village development" means a covered development project located within 1,000 feet of a Bay Area Rapid Transit (BART) station.

#### **17.109.030 Application**

This chapter shall apply to all covered development projects with 20 or more new housing units, unless the covered development project has acquired or will acquire vested rights to develop under California law on or before May 1, 2007, or unless the covered development project qualifies for an exemption listed in Section 17.109.040 (Exemptions).

#### **17.109.040 Exemptions**

This chapter shall not apply to any of the following:

- (1) Transit village development projects that are subject to an executed Disposition and Development Agreement or Owner Participation Agreement with the City or Agency.
- (2) The reconstruction or rebuilding of any housing units that have been damaged or destroyed by fire, flood, earthquake or other act of nature unless the damaged or destroyed housing were inclusionary units. Such reconstruction or rebuilding must be commenced no later than four years and completed no later than six years from the date of the damage or destruction.
- (3) A covered development project that is subject to affordability restrictions recorded by the City or the Agency pursuant to funding through the City and Agency's competitive affordable housing funding process.
- (4) A covered development project containing rental units where at least 40 percent of the rental units are restricted for at least 55 years to households with incomes not exceeding 60 percent of AMI, adjusted for household size, with rents not exceeding 30 percent of 60 percent of AMI, adjusted for household size.
- (5) The rehabilitation of existing housing units in which the estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation. Housing units newly constructed or established as part of a project that also includes rehabilitation of existing housing units are not exempt.

#### **17.109.050 On-Site Inclusionary Housing Requirements**

For covered development projects covered by Section 17.109.030 (Application), at least 15 percent of all housing units in the covered development project must be affordable housing, with that affordable housing subject to the occupancy restrictions, affordability levels, and terms of affordability set forth in Section 17.109.110 (Affordability Level and Housing Cost). This requirement may be applied no more than once to an approved covered development project, regardless of changes in the character or ownership of the project, provided the total number of housing units does not change.

*As an alternative, a project applicant may satisfy the inclusionary requirement of this section through development of off-site units pursuant to Section 17.109.060 (Off-Site Inclusionary Housing), payment of an inclusionary in-lieu fee pursuant to Section 17.109.150 (In-Lieu Fee), or a combination of these alternatives that at least equals the cost of providing off-site inclusionary units.*

#### **17.109.060 Off-Site Inclusionary Housing**

A project applicant may elect to build affordable housing units on a site other than the site of the principal project to satisfy the requirements of this chapter. If the project applicant selects this alternative, the number of affordable units developed off-site must be no fewer than 20 percent of all housing units constructed on the principal project site.

Off-site units shall be subject to all applicable provisions of this chapter, and shall have the same tenure (rental or ownership) as the housing units in the principal project.

If off-site units are provided in another covered development project subject to the requirements of this chapter, the housing units that qualify as off-site units shall not be included when determining the number of inclusionary housing units required in that covered development project.

#### **17.109.070 Fractional Units**

When the inclusionary housing calculation for on-site or off-site units produces a fractional number of units, the project applicant shall (1) round up to the next whole number, in which case that resulting number of affordable units shall be provided as set forth in this chapter, or (2) pay a pro-rata share of the in-lieu fee as set forth in Section 17.109.150 (In-Lieu Fee) for the fractional unit.

#### **17.109.080 Prohibition of Affordable Housing Development Subsidies**

No housing unit shall be counted as an inclusionary unit pursuant to this chapter if it receives a development subsidy from any federal, state or local program, including City or Agency programs, established for the purpose of providing affordable housing, to fund the inclusionary units required by this chapter, except to the extent such subsidies are used only to increase the level of affordability of the housing unit beyond the level of affordability required by this chapter. Housing units assisted only with tax-exempt bond financing or 4% low income housing tax credits shall be exempt from the provisions of this section, provided that such units are rented to and occupied only by very low income households as defined in California Health and Safety Code Section 50105 at rents that do not exceed an affordable rent for a very low income household adjusted for family size appropriate for the unit pursuant to California Health and Safety Code Section 50053(b)(2).

#### **17.109.090 Timing of Provision of Inclusionary Units**

On-site and off-site inclusionary housing units required by Sections 17.109.050 and 17.109.060 must be constructed, completed, and ready for occupancy no later than the market rate units in the principal project. If the principal project is constructed in phases, the inclusionary units must be constructed in phases in proportion with the market rate units or sooner.

#### **17.109.100 Unit Comparability**

Inclusionary housing units shall be comparable to market rate units in the principal project. The number of inclusionary units of each size, as measured by number of bedrooms per unit, shall be at least proportional to the number of market rate units of each size in the principal project, as measured by number of bedrooms per unit. Exterior appearance and overall quality of construction of the inclusionary units shall be comparable to the market rate units in the principal project. The square footage and interior features of inclusionary units do not need to be same as or equivalent to those in market rate units in the principal project, provided they are of good quality and consistent with then-current standards for new affordable housing. Project applicants shall endeavor to distribute the inclusionary units proportionately among the market rate units,

avoid concentration of inclusionary units; and avoid taking actions that would stigmatize or set apart the inclusionary units.

If the housing units in the principal project do not contain bedrooms separated from the living space, the on-site and off-site units shall be comparable in size according to the following equivalency calculation.

Size of Unit	Equivalent Unit
Less than 550 Square Feet	Zero bedroom unit
551 to 750 Square Feet	One bedroom unit
751 to 1,000 Square Feet	Two bedroom unit
1,001 to 1300 Square Feet	Three bedroom unit
More than 1300 Square Feet	Four bedroom unit

#### 17.109.110 Affordability Level and Housing Cost

##### Rental units

Inclusionary units required by this chapter that are rental housing units must:

- (1) be rented to and occupied only by low income households;
- (2) have rents that do not exceed an affordable rent for a low income household adjusted for family size appropriate for the unit pursuant to California Health and Safety Code 50053(b)(3); and
- (3) be subject to these restrictions on tenant incomes and affordable rents for a period of at least 55 years from the date of initial occupancy.

##### Ownership units:

Inclusionary ownership units required by this chapter that are ownership units must:

- (1) in accordance with the schedule below, be subject to limitations on the maximum allowable income of households buying the inclusionary units such that the mean limit on incomes of households buying ownership inclusionary units produced for a covered development project does not exceed 100 percent of AMI;
- (2) be sold at an affordable sales price in accordance with the schedule below; and
- (3) be subject to these restrictions on affordable sales prices and buyer incomes for a period of at least 45 years from the date of initial sale.

Affordability schedule for ownership units:

Maximum Household Income	Affordable Housing Cost
80 percent of AMI	30 percent of 70 percent of AMI
90 percent of AMI	35 percent of 80 percent of AMI
100 percent of AMI	35 percent of 90 percent of AMI
110 percent of AMI	35 percent of 100 percent of AMI
120 percent of AMI	35 percent of 110 percent of AMI

**17.109.120 Affordability Restrictions**

The occupancy, rent, and sales restrictions imposed by this chapter shall be set forth in a regulatory agreement, affordability agreement, resale controls, declaration of covenants, or similar binding instrument executed by the City and the applicant. Such restrictions shall be recorded against the site or sites containing the inclusionary housing units as covenants running with land, senior in priority to any private liens or encumbrances, and shall be enforceable by the City against the project applicant or the applicant's successors-in-interest to the sites for the full affordability term. Additional restrictions, deeds of trust, rights of first refusal, or other instruments may be required by the City Administrator as reasonably needed to enforce these restrictions. The City Administrator shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the financing of the inclusionary units would be infeasible without said subordination.

**17.109.130 Condominium Projects**

If the principal project is developed pursuant to a condominium map, but the housing units in the project are placed in the rental market rather than being sold, the requirements for rental inclusionary units shall apply.

**17.109.140 Teacher Housing**

For any covered development project producing on-site or off-site ownership inclusionary units located outside of a redevelopment project area with housing production requirements, no fewer than 20 percent of those inclusionary units must be offered for sale first to teachers employed by the Oakland Unified School District or a public charter school in Oakland who are moderate income and otherwise qualify for purchase of the unit under Section 17.109.110 (Affordability Level and Housing Cost).

For units sold to teachers under this section, the owner shall execute a promissory note and the City shall record a deed of trust or other instrument upon the owner's purchase to evidence and secure payment to the City of an amount equal to the difference between the inclusionary unit's fair market value and the affordable sales price for the unit, subject to the shared appreciation provisions below. If the owner of the inclusionary unit remains a teacher employed by the Oakland Unified School District or a public charter school in Oakland for at least five years and continues to occupy the unit as his or her principal residence throughout that period, the City may then remove the 45-year resale restrictions required under Section 17.109.120 (Affordability Restrictions), and the owner shall then be subject only to the repayment and shared appreciation provisions below. If the owner does not remain a teacher as defined above for the five-year period, or the owner sells the

inclusionary unit within this five-year period, the 45-year resale restrictions shall remain on the inclusionary unit.

#### Repayment and Shared Appreciation

After the five-year period referenced above, and after the City has removed the resale restrictions from the inclusionary unit, the owner may sell the inclusionary unit at market rate. However, upon sale of the inclusionary unit or default under any of the conditions imposed in accordance with this chapter, (1) the owner shall repay to the City the full amount of the promissory note at the time of sale, and (2) the City and the owner shall share any increase in the fair market value of the inclusionary unit above its fair market value at the time the owner purchased the unit. Beginning in the 6th year of occupancy, the owner shall be entitled to receive 20 percent of the increase in fair market value of the inclusionary unit after deducting an allowance for reasonable and customary selling costs paid by the owner, and the City shall receive the balance. The owner shall be entitled to receive an additional 20 percent of the increase in fair market value for each additional year that the owner occupies the inclusionary unit, up to a maximum of 100 percent of the increase in fair market value.

Any payments received by the City hereunder shall be deposited into the Affordable Housing Trust Fund established pursuant to Section 15.68.100 of the Oakland Municipal Code.

#### **17.109.150 In-Lieu Fee**

The requirements of this chapter may be satisfied by paying an in-lieu fee for each unit that would be required if the applicant were to provide off-site inclusionary units pursuant to Section 17.109.060. The in-lieu fee for each inclusionary unit shall be established by the City based on an estimate of the total subsidy required to make units comparable to inclusionary units affordable at the rents or sales prices required by Section 17.109.110 (Affordability Level and Housing Cost). The total subsidy required shall be estimated based on the difference between the estimated cost of developing an inclusionary unit and

- (1) for an ownership inclusionary unit, an affordable sales price; or
- (2) for a rental inclusionary unit, the amount of debt that can be supported by a unit with an affordable rent after payment of operating expenses and a reasonable deposit to reserves.

The initial in-lieu fee shall be established in the City's Master Fee Schedule by the unit size by bedroom, and may be periodically adjusted.

No building permit shall be issued for any residential development that elects to pay an in-lieu fee pursuant to this section until the fee is paid to the City.

### **17.109.160 Deposit and Use of Fees**

All in lieu fees collected by the City pursuant to this chapter shall be deposited to the Affordable Housing Trust Fund established pursuant to Section 15.68.100 of the Oakland Municipal Code.

Twenty percent of the in-lieu fee monies shall be designated for an Oakland Teacher Mortgage Assistance Program to be established by the City. The program shall provide teachers employed by the Oakland Unified School District or a public charter school in Oakland with loans to assist in the purchase of ownership units, with shared appreciation provisions comparable to those provided in Section 15.109.140 above.

A portion of the in-lieu fees generated pursuant to this chapter may be used to pay for the City's costs of monitoring and enforcing this chapter.

### **17.109.170 Inclusionary Housing Plan**

A project applicant must include as part of its first application to the City for a development-related permit or approval an inclusionary housing plan that includes outlining the methods by which the project applicant proposes to meet the requirements of this chapter.

The City shall approve, conditionally approve or reject the proposed inclusionary housing plan as part of its decision on the development-related permit or approval. No application for a development-related permit or approval, including without limitation, a tentative map, parcel map, conditional use permit, Planned Unit Development (Preliminary and Final), Master Plan, variance, design review, or building-related (grading, demolition, building) permit to which this chapter applies may be deemed complete until an inclusionary housing plan is submitted to the City. The inclusionary housing plan must include, at a minimum, the following:

- (1) the location, type of structure (attached, semi-attached, or detached), proposed tenure (ownership or rental), and size of the proposed market-rate units, commercial space and/or inclusionary units and the basis for calculating the number of inclusionary units;
- (2) a floor and site plan depicting the location of the inclusionary units;
- (3) the income levels to which each inclusionary unit will be made affordable;
- (4) for phased covered development projects, a phasing plan that provides for the timely development of the number of inclusionary units proportionate to each proposed phase of development as required by Section 17.109.100 (*Unit Comparability*) of this chapter;
- (5) any alternative means proposed to meet the inclusionary housing requirement; and
- (6) any other information reasonably requested by the City to assist with evaluation of the plan under the standards of this chapter.



### **17.109.180 Enforcement and Remedies**

This chapter may be enforced pursuant to the provisions of Oakland Planning Code Chapter 17.152 (Enforcement).

A project applicant's failure to comply with the requirements of this chapter shall constitute cause for the City to assess a penalty against the applicant or owner in an amount equal to, at a minimum, the current in-lieu fee provided for under this chapter, as adjusted under this section.

### **17.109.190 Third Party Rights of Action**

If any project applicant violates any provision of this chapter, any person, individually or by class action, may seek relief in a court of appropriate jurisdiction, including injunctive relief, declaratory relief and damages. In any such court proceeding, the prevailing party shall be awarded his or her reasonable attorneys' fees.

### **17.109.200 Reductions, Adjustment, Waivers and Appeals**

A project applicant may request a reduction, adjustment, or waiver of the requirements imposed by this chapter at the time of application. To receive a reduction, adjustment or waiver, the project applicant must demonstrate that it meets one of the following criteria:

- (1) That there is an absence of any reasonable relationship or nexus between the impact of the development and either the inclusionary requirement or the amount of the in-lieu fee charged;
- (2) That the inclusionary requirement would deprive the project applicant of all economically viable use of the property or constitute a taking of the project applicant's property; or
- (3) That application of this chapter to the principal project would otherwise violate either the California or the United States Constitutions.

Any such request, and all supporting materials, shall be made in writing and filed with the City as part of the application for the first development-related permit or approval for the principal project. The request shall set forth in detail all the factual and legal basis for the claim of reduction, adjustment, or waiver. The City shall consider the request along with consideration of the underlying permit or approval application. The project applicant shall bear the burden of presenting appropriate evidence to support the request, including comparable technical information to support applicant's position. If a reduction, adjustment, or waiver is granted, any subsequent change in the approved use within the project shall invalidate the adjustment, reduction or waiver of the fee or inclusionary requirement.

If a request for a reduction, adjustment, or waiver is denied, the project applicant may appeal that decision by following the appeals procedure established for denial of the underlying permit or approval.

If no appeal procedure is provided for the underlying permit or approval, then the applicant may appeal the request for a reduction, adjustment, or waiver to the City Planning Commission within ten calendar days after the date of a decision. In the event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the City Planning Department and shall be filed with such Department. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the City or wherein its decision is not supported by the evidence in the record. Upon receipt of the appeal, the Secretary of the City Planning Commission shall set the date for consideration thereof. Not less than ten days prior to the date of the Commission's consideration of the appeal, the Secretary shall give written notice to the project applicant/appellant, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. In considering the appeal, the Commission shall determine whether the project applicant/appellant has met its burden and may grant or deny the requested reduction, adjustment, or waiver or require such changes in the Inclusionary Housing Plan or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria. The decision of the City Planning Commission is final and not subject to administrative appeal.

#### **17.109.210 Incentives**

A project applicant may be entitled to a density bonus and incentives or concessions under the California Density Bonus Law (Government Code Section 6519, et seq.) in return for producing inclusionary units, if and to the extent provided for under the Density Bonus Law. For purposes of calculating the number of inclusionary units required under this chapter, any additional housing units authorized as a density bonus under the Density Bonus Law will not be counted as part of the covered development project.

#### **17.109.220 Administrative Regulations**

Notwithstanding any other provision in the Planning Code, the City Administrator is hereby authorized to adopt administrative rules and regulations consistent with this chapter as needed to implement this chapter, and to make such interpretations of this chapter as he or she may consider necessary to achieve the purposes of this chapter. Such rules and regulations may include, without limitation, methods and criteria for certifying incomes of prospective tenants or purchasers of inclusionary units, a method for calculating affordable sales prices, selection, occupancy and rent-setting standards, methods of imposing and monitoring affordability restrictions on inclusionary units, procedures and criteria for reviewing inclusionary housing plans, and guidelines for implementation of the teacher housing programs described in Sections 17.109.140 (Teacher Housing) and 17.109.150 (In-Lieu Fee).

**SECTION 3.** The record before this Council relating to this Ordinance and supporting the findings made herein includes, without limitation, the following:

1. Association of Bay Area Governments, Regional Housing Needs Determinations: 1999-2006 Housing Element Period, third official release dated June 1, 2000.
2. The report to City Council titled "Informational Report on the Final Recommendations of the Housing Development Task Force" and dated July 18, 2000.
3. The report to City Council titled "An informational staff report on inclusionary zoning programs for affordable housing" and dated May 15, 2001
4. California Coalition for Rural Housing and Non-Profit Housing Association of Northern California, "Inclusionary Housing in California: 30 Years of Innovation," 2003.
5. The report to City Council titled "A staff report describing inclusionary zoning programs in other California jurisdictions and a recommendation that the City Council not take any further action on inclusionary zoning" and dated December 9, 2003.
6. "City of Oakland Housing Element", dated June 14, 2004.
7. "Consolidated Plan for Housing and Community Development" dated May 13, 2005.

**SECTION 4.** The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision, and are hereby adopted as findings.

**SECTION 5.** The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) the Community and Economic Development Agency, Housing and Community Development Division, 250 Frank H. Ogawa Plaza, 5th floor, Oakland, California; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, California.

**SECTION 6.** The provisions of this Ordinance are severable, and if any clause, sentence, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is held to be invalid or preempted by state or federal law, such holding shall not impair or invalidate the remainder of this Ordinance. If any provision of this Ordinance is held to be inapplicable to any specific development project or applicant, the provisions of this Ordinance shall nonetheless continue to apply with respect to all other covered development projects and applicants. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

**SECTION 7.** The City Council finds and determines that this Ordinance complies with the California Environmental Quality Act (CEQA) based upon the following, each of which provides a separate and independent basis, (1) reliance upon the Environmental Impact Report prepared for the Land Use and Transportation Element of the General Plan that was certified by the City Council on March 24, 1998; (2) reliance upon the Environmental Impact Report prepared for the Estuary Policy Plan that was certified by the City Council on June 8, 1999; (3) reliance upon the Mitigated Negative Declaration prepared and approved for the Housing Element of the General Plan on

June 14, 2004; (4) CEQA Guidelines section 15061(b) (3); and (5) CEQA Guidelines section 15183.

**SECTION 8.** The Oakland Master Fee Schedule is hereby amended to provide for the following initial inclusionary housing in-lieu fee:

Unit Size By Bedroom	In-Lieu Fee
0 Bedroom	\$ 195,000
1 Bedroom	\$ 240,000
2 Bedroom	\$ 265,000
3 Bedroom	\$ 305,000
4 Bedroom	\$ 315,000

No later than December 31, 2006, the City shall retain a consultant and complete a study to determine an appropriate in-lieu fee in accordance with the provisions of Section 17.109.150 (*In-Lieu Fee*) of the Inclusionary Housing Requirements and the above fee shall then be adjusted by ordinance if warranted. The City may update this study periodically as necessary.

In lieu of such periodic updates of the in-lieu fee study, the fee shall be adjusted annually according to the provisions for annual increases in the Jobs/Housing Impact Fee contained in Section 15.68.050 of the Municipal Code.

**SECTION 9.** Section 15.68.100 of the Municipal Code (Affordable Housing Trust Fund) is hereby amended to add the following:

Twenty percent of funds deposited to the Affordable Housing Trust Fund as a result of in-lieu fees collected pursuant to Section 17.109.150 of the Oakland Planning Code shall be reserved for the Teacher Mortgage Assistance Program authorized by Section 17.109.160 of the Oakland Planning Code. Any funds received by the City in connection with the Teacher Mortgage Assistance Program shall also be deposited to the Affordable Housing Trust Fund for this same purpose. Notwithstanding any other provision contained in this chapter, funds reserved for the Teacher Mortgage Assistance Program may be used to assist persons and families of moderate income as defined in California Health and Safety Code Section 50093 and its implementing regulations.

**SECTION 10.** The first sentence of the third paragraph of Section 15.68.100 of the Municipal Code (Affordable Housing Trust Fund) is hereby amended to read as follows (additions are indicated by underlined text):

Funds may also be used to cover reasonable administrative or related expenses of the city not reimbursed through processing fees, including costs of administering or enforcing the Inclusionary Housing Requirements contained in Chapter 17.109 of the Oakland Planning Code.

**SECTION 11.** Section 17.152.070.A of the Oakland Planning Code is amended to add the Inclusionary Housing Ordinance as follows:

1. 17.109.010 through 17.109.220;
- ~~2.~~ 17.112.010 through 17.112.060;
- ~~3.~~ 17.134.010 through 17.134.120;
- ~~4.~~ 17.136.010 through 17.136.130;
- ~~5.~~ 17.140.010 through 17.140.120;
- ~~6.~~ 17.142.010 through 17.142.090;
- ~~7.~~ 17.146.010 through 17.146.060; and,
- ~~8.~~ 17.148.010 through 17.148.110

**SECTION 12.** This Ordinance shall be effective upon its adoption if it receives at least six affirmative votes; otherwise, it shall be effective upon the seventh day after final adoption; but as set forth above shall not be applied to covered development projects that have acquired or will acquire vested rights to develop under California law on or before May 1, 2007.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2006

PASSED BY THE FOLLOWING VOTE:

AYES-                BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL,  
                              QUAN, REID, AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
                              **LATONDA SIMMONS**  
                              City Clerk and Clerk of the  
                              Council  
                              of the City of Oakland, California

**AN ORDINANCE ADDING CHAPTER 17.109 TO THE OAKLAND PLANNING CODE TO ESTABLISH AN INCLUSIONARY HOUSING REQUIREMENT AND ESTABLISH TWO NEW HOMEOWNERSHIP PROGRAMS FOR OAKLAND TEACHERS, MAKING RELATED AMENDMENTS TO THE OAKLAND PLANNING CODE, AMENDING SECTION 15.68.100 OF THE OAKLAND MUNICIPAL CODE, AND AMENDING THE MASTER FEE SCHEDULE TO ESTABLISH AN INCLUSIONARY HOUSING IN-LIEU FEE**

**NOTICE AND DIGEST**

This Ordinance adds Chapter 17.109 to the Oakland Planning Code to establish an *inclusionary housing requirement* and establish two new homeownership programs for Oakland teachers, makes certain related amendments to Section 17.052.170.A of the Oakland Planning Code and Section 15.68.100 of the Oakland Municipal Code, makes certain findings in support of its enactment, and amends the City's Master Fee Schedule to establish an inclusionary housing in-lieu fee.

**Attachment B**  
**Summary of Key Provisions of Inclusionary Housing Ordinance**

Units Covered	<ul style="list-style-type: none"> <li>• Housing developments with at least 20 units (including loft and live/work conversions of non-residential buildings)</li> <li>• Applies to units that gain vested development rights after May 1, 2007</li> </ul>
On-site inclusionary units required	<ul style="list-style-type: none"> <li>• 15% of total units in project</li> </ul>
Off-site inclusionary units required	<ul style="list-style-type: none"> <li>• 20% of total units in project</li> </ul>
Affordability Levels – Ownership Housing	<ul style="list-style-type: none"> <li>• Maximum income = 120% of median income (moderate income); average income limit within each project not to exceed 100% of median income</li> <li>• Sales prices affordable to same income ranges using Redevelopment Law formula</li> </ul>
Affordability Levels – Rental Housing	<ul style="list-style-type: none"> <li>• Maximum income = 80% of median income (low income)</li> <li>• Rents set at 30% of 60% of median income using Redevelopment Law formula</li> </ul>
Term of Affordability Controls	<ul style="list-style-type: none"> <li>• 45 years for ownership housing</li> <li>• 55 years for rental housing</li> </ul>
Timing and Comparability	<ul style="list-style-type: none"> <li>• Inclusionary units must be developed and marketed no later than market-rate units</li> <li>• Inclusionary units must be generally comparable to market rate units</li> <li>• Units should be distributed throughout the development to avoid economic segregation</li> </ul>

In-Lieu Fees	<ul style="list-style-type: none"> <li>• Based on full subsidy required to reduce development cost to the affordable sales prices or rent levels</li> <li>• City consultant to complete an in-lieu fee study no later than December 31, 2006</li> <li>• Fees indexed to annual increases in construction costs, with in-lieu fee study updated periodically as needed</li> <li>• Fees deposited to Affordable Housing Trust Fund for affordable housing only</li> </ul>
Use of Federal, State or Local Affordable Housing Funds	<ul style="list-style-type: none"> <li>• Prohibited, except for tax-exempt bonds or 4% tax credits if project provides 20% of units at 50% of median income</li> </ul>
Exemptions	<ul style="list-style-type: none"> <li>• Certain City/Agency sponsored transit village projects</li> <li>• Publicly-assisted rental housing projects funded under City/Agency NOFA or meeting tax-credit requirements (40% at 60% AMI)</li> <li>• Reconstruction of units damaged by natural disaster</li> <li>• Minor and moderate rehabilitation of existing housing</li> <li>• Condominium conversions</li> </ul>
Administration and Enforcement	<ul style="list-style-type: none"> <li>• No permits issued without approved inclusionary housing plan or payment of in-lieu fee</li> <li>• Recorded restrictions to ensure affordability</li> <li>• For non-compliance, City may revoke permits, assess a penalty equal to the full in-lieu fee, or take other actions</li> <li>• Third parties have right to take action to enforce the requirements</li> </ul>



Teacher Housing Programs	<ul style="list-style-type: none"><li>• 20 percent of inclusionary ownership units (except in certain redevelopment project areas) targeted to Oakland teachers.</li><li>• 20 percent of in-lieu fees used for homebuyer assistance program for Oakland teachers</li><li>• Teachers must remain in Oakland school district for 5 years</li><li>• In years 6 through 10, teachers earn increasing share of appreciation in market value</li><li>• Principal amount of the price reduction or homebuyer loan repaid to City</li></ul>
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**CITY OF OAKLAND**  
**AGENDA REPORT**

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Community and Economic Development Agency  
DATE: April 25, 2006

RE: An Informational Report And Analysis Of The Inclusionary Zoning Policy  
Recommendations Submitted By The Oaklanders For Affordable Housing Coalition

**SUMMARY**

In response to a request from the City Council's Rules Committee, staff has prepared a summary and analysis of a proposal offered by the Oaklanders for Affordable Housing Coalition for an inclusionary zoning policy for the City of Oakland (see Attachment A). Staff has not made any formal recommendations in favor or against this specific proposal. The purpose of this report is to provide an assessment of the proposed ordinance and to highlight policy issues that the City Council may wish to address as part of any proposed inclusionary housing policy.

Given the continued strength of the City's housing market and the pace of new development of market rate housing, it appears that market conditions are conducive to adoption of an inclusionary housing program similar to what is already in place in over 100 California cities and counties. While attention needs to be paid to how such a program is implemented and phased in, over time developers adjust to these requirements and come to view inclusionary requirements as a cost of doing business.

Inclusionary housing programs should be viewed as one component of a city's overall housing strategy. Depending on local circumstances, inclusionary programs might not meet the full spectrum of needs, nor will an inclusionary program produce all the affordable housing that is needed in the City. Inclusionary programs may work well as a complement to other affordable housing efforts, including preservation of existing assisted housing, development of new assisted housing with public subsidies, first-time homebuyer assistance, rehabilitation loans for low income homeowners, and the public housing and Section 8 programs operated by housing authorities and targeted to the very lowest income households. For example, an inclusionary housing program that targets low and moderate income households can serve that segment of the market while allowing the City to target its limited affordable housing dollars to extremely low and very low income households who have the greatest housing needs, but also require the greatest subsidies.

The report includes some suggestions regarding key policy decisions that need to be made and some guidance and recommendations on general considerations for the design and implementation of an inclusionary housing program.

**Comment:** The title concisely states the report's: (a) purpose, (b) subject, and (c) the total dollar amount identified in the report (when applicable). The title must be clear enough so that a person of average intelligence will understand the action to be taken.  
The title of a report that introduces a resolution or an ordinance should begin with "Resolution..." or "Ordinance..." and should repeat verbatim the title of the resolution or ordinance. The title of a report that requests City Council action without a resolution should begin "Request for the City Council to..." The title of a report that presents information only should begin with "Status Report..." or "Informational Report..." Note that the Council may not take action on an informational report.

**Comment:** in one to three paragraphs, this section summarizes the action and the most essential information the City Council needs to make an informed decision. It may include the following key items:  
• Purpose or origin of report  
• Essential background  
(only the information readers need to understand other – and more significant – information in the summary)  
• Most significant issues  
• Major recommendations and rationale (including how the recommendations meet City Council goals)  
• Cost of implementing recommendations  
• Source of funding  
• Action requested of the City Council

Item: \_\_\_\_\_  
Community and Economic Development Committee  
April 25, 2006

## FISCAL IMPACT

This is an informational report. A fiscal impact analysis of an Inclusionary Zoning Policy has not been conducted.

## BACKGROUND

The issue of inclusionary zoning and suggestions that Oakland adopt such a policy has come before the City Council on a number of occasions.

The Final Report of the Housing Development Task Force, which was adopted by the City Council in July 2000, included a recommendation to establish an inclusionary zoning ordinance.

On May 15, 2001, staff presented the City Council with an overview of inclusionary zoning programs and the issues associated with the feasibility of implementing such a program in Oakland.

In December 2003, staff provided the City Council with a summary of key findings of a comprehensive survey of inclusionary zoning published by the Non-Profit Housing Association of Northern California (NPH) and the California Coalition for Rural Housing (CCRH). That study is the most thorough study of inclusionary zoning in California conducted in over a decade. While NPH is currently working to update the data, it remains the most definitive source of information regarding existing inclusionary policies and programs in cities and counties throughout the state. Attachment B to this report is a table from the NPH/CCRH report summarizing inclusionary programs in a number of jurisdictions throughout the state.

Recently, a number of community organizations have advocated for a City policy to require that market-rate housing developments include housing units affordable to low and moderate income households. The Oaklanders for Affordable Housing Coalition is a group of community based organizations that includes Oakland Community Organizations, the Alameda County Central Labor Council, East Bay Alliance for a Sustainable Economy, ACORN, East Bay Asian Youth Center, Asian Pacific Environmental Network, the Green Party, Public Advocates, Just Cause, Urban Strategies Council, the Greenbelt Alliance, and the Non-Profit Housing Association. The Coalition has developed a proposed policy framework for an inclusionary zoning policy for Oakland. This report provides a summary and analysis of that policy framework.

**Comment:** This section (a) specifies the fiscal impacts of staff's recommended actions and (b) analyzes those impacts. It includes analysis of the following items when applicable:

- One-time costs
- Sustained annual costs
- Matching costs
- Sources of funding and requisite account codes, as applicable (fund, org., account, project)
- Anticipated revenues and requisite account codes, as applicable (fund, org. account, project)
- Staffing requirements (*FTE costs for hiring new staff or for reassigning existing staff*)
- Overhead costs or disallowed costs
- Total funding to date, with major funding sources, and total projected budget, if the report is related to a long-term effort or project.

*Note: An "Informational Report", unlike other types of agenda reports, does not recommend action and therefore does not include fiscal impacts. Although the "Fiscal Impacts" section must be included in an "Informational Report," it should simply contain the following sentence: "Since this report is informational only, no fiscal impact analysis was conducted." [1]*

**Comment:** This section contains only that information necessary to provide readers with a foundation for understanding the content in the rest of the report. It should include a brief legislative history of the policy discussed in the report. It should also include significant historical events such as public hearings, City Council discussions, and meetings with other public agencies. (These types of events are significant if issues in the report are especially important to the public.)

This section may include a brief description of the process used either to identify the "Key Issues" or to develop the "Recommendations" presented in the report. For example, if key issues were identified as the result of meetings with the public, the process by which staff obtained community input should be documented. (In this example, the section might include the following comments: "The Agency held 6 public meetings in strategic locations in West Oakland, East Oakland, and the Foothills with a total of 300 community members in attendance. Following is a summary of the information we gathered from those meetings.") [2]

## KEY ISSUES AND IMPACTS

The City faces a number of inter-related affordable housing issues that could be addressed in part by an inclusionary housing program.

### Unmet Housing Needs

The City's Consolidated Plan for Housing and Community Development identifies substantial housing needs of existing residents, particularly those with very low, low and moderate income. Over 30,000 very low and low income households experience housing problems including overcrowding, substandard conditions and overpayment (housing costs greater than 30 percent of household income).

### Housing to Accommodate New Growth

The City's Housing Element identifies projected housing needs for the period 1999 through 2006 (the state has recently extended the time frame by an additional two years through mid-2008). The City's Regional Housing Need Allocation calls for production of over 7,700 units. Over 3,000 of these units must be affordable to very low and low income people. While the State's Housing Element law does not require the City to build these units, it does require that the City ensure that there are adequate sites with appropriate zoning to meet this need, and it requires that the City remove public policy barriers and develop and implement affirmative programs to meet its housing needs, including the need for affordable housing.

### Redevelopment Law Requirements

Under California Redevelopment Law, redevelopment project areas adopted after 1976 are subject to a requirement to include affordable housing in the project areas. These requirements mandate that 15 percent of all housing units newly constructed or substantially rehabilitated in the project area must be affordable and targeted to low to moderate income households, with at least 6 percent of units targeted to very low income households and 9% targeted to moderate or low income households. The law requires that affordable units be built within the project area, but not necessarily within the market rate projects (it is possible to provide the units outside the project area, but twice as many units are required in that case). Oakland has a number of redevelopment project areas subject to these requirements: Coliseum, Broadway/MacArthur/San Pablo, Oakland Army Base, West Oakland, Central City East and Oak Knoll. Many jurisdictions use inclusionary housing programs to meet this requirement.

At present a number of large residential development projects are either underway or proposed in all of these areas. These projects collectively contain over 7,500 housing units, and will generate an obligation for production within these redevelopment areas of over 1,000 units of affordable housing, including nearly 500 units for very low income households.

**Comment:** This section (a) identified key issues ("problems" or concerns") surrounding the policy, program, or project discussed in the report; (b) analyzes significant impacts of those issues; and (c) explains the need for appropriate corrective action.

This section includes discussion of the following issues, when applicable, and the significant impacts of those issues:

• Legal

... [3]

### Promotion of Mixed-Income Development

Inclusionary requirements are specifically designed to encourage residential development that includes housing for a range of income levels. Inclusionary requirements for redevelopment areas are applied to the entire redevelopment area, and inclusionary zoning laws require income mixing within individual developments. Inclusionary housing can serve as an important mechanism for providing fair housing opportunities for minorities outside areas of racial concentration and can help promote a deconcentration of low income people by providing opportunities to live in neighborhoods that would otherwise consist largely of middle- and upper-income households.

### Inclusionary Housing Programs in California

Inclusionary housing programs have been in place in California for over 30 years. As of March 2003, 107 jurisdictions had some kind of inclusionary housing program, and the rate of adoption has increased over the past ten years as cities and counties have sought innovative ways to meet their affordable housing needs.

Many jurisdictions, particularly the larger cities, use inclusionary housing programs to complement and augment their other housing efforts. Typically, inclusionary programs do not meet the full spectrum of needs. Other programs and funding sources, such as Federal grant funds and redevelopment agency housing set-aside funds, are used to provide deeper subsidies to develop and preserve housing affordable to income levels lower than are feasible to reach through inclusionary programs.

While there is considerable variation in these programs, some general features can be described:

- Half of all programs require at least 15 percent of units to be affordable; including roughly one-fourth that require 20 percent or more.
- Most programs target low income (50% to 80% of median income, or between \$38,000 and \$60,000 for a three-person household) and moderate income (80% to 120% of median income, or between \$60,000 and \$90,000 for a three-person household). Just under half of all programs provide some targeting to very low income households (30% to 50% of median income, or between \$23,000 and \$38,000 for a three-person household). Targeting to extremely low income households (less than 30% of median income, or less than \$23,000 for a three-person household) is not commonly found.
- Rental housing is generally targeted to very low and low income, while ownership housing is generally targeted to low and moderate income.
- Most jurisdictions require long-term affordability covenants. Many cities have amended their programs to ensure that projects remain affordable for at least as long

as required for affordable housing under California Redevelopment Law (45 years for homeownership, 55 years for rental).

- Many jurisdictions exempt smaller projects (ranging from 3 to 10 units) from inclusionary requirements, while others require in-lieu fees to be paid for smaller projects. Some jurisdictions require larger percentages of affordable housing for larger development projects.
- Many jurisdictions require that affordable units be built at the same time as market rate units.
- Most programs provide for alternatives to on-site construction within the market-rate project. Common alternatives include off-site construction, land dedication, and payment of in-lieu fees.
- Most jurisdictions provide incentives to developers to help offset the cost of providing affordable units. The most common incentive is density bonuses that allow projects to exceed the allowable density in order to provide affordable units by reducing the per unit costs of development. Other incentives include fast track processing; direct subsidies; design flexibility and relaxation of development standards; and fee waivers, reductions or deferrals. In some jurisdictions, inclusionary units may be of a smaller size or may require only standard grade finishes and features to reduce their cost. Some larger cities, such as San Diego and San Francisco, do not provide incentives.

### DESCRIPTION OF PROPOSED POLICY

The proposal advanced by the Oaklanders for Affordable Housing Coalition provides a basic framework for an inclusionary zoning program. A full summary of their recommendations is included as Attachment A to this report. The OAHC proposal provides the following components:

1. The policy would apply to all residential development with 5 or more units.

**Comment:** This section explains how the policy, program, or project which is the topic of the report will meet the identified need or needs. It discusses that policy, program, or project in appropriate detail. This section generally includes discussion of the following items when applicable:

- Purpose
- Goals and objectives
- Community members and groups served
- Location
- Implementation plan (including time line)
- Plan for ongoing operation or maintenance
- Evaluation methods

*Note: Not every agenda report will require this section. If content for a particular report does not include "Description" information, this section should be deleted.*

2. Projects subject to the ordinance would be required to provide 20 percent of the units at affordable levels, as follows:

	Extremely Low Income (less than \$22,650)	Very Low Income (\$22,650 to \$37,700)	Below 60% AMI (less than \$45,240)	Low Income (\$37,700 to \$59,600)	Up to 100% of AMI (\$59,600 to \$75,400)
Rental (alternative)	5% 9%	10%		5%	
Owner (alternative)			5% 9%	10%	5%

Note: All income limits are for 3-person households. Limits are higher for larger households and lower for smaller households.

Projects developed by non-profit developers, in which 100 percent of the units are affordable (no level specified) would be exempt.

3. Units would be required to remain affordable for 55 years
4. Developers could also meet the requirement by building a higher percentage of units (30 percent) offsite, provided that the off-site units are in the same school attendance area as the project generating the inclusionary obligation.
5. Developers could also dedicate land to be used for development of affordable housing.
6. Developers could choose to pay an in-lieu fee equal to the full amount of the "financing gap" between development cost and affordable rent/price, assuming no other sources of subsidy are used. The fee would be set based on the average subsidy required for projects assisted by the City in the previous year.
7. In-lieu fees would be earmarked only for housing affordable to households at or below 30 percent of median income and housing affordable to households at or below 50 percent of median income.
8. Developers would be entitled to incentives such as a fast-tracking of permit approvals; other incentives would be considered.
9. The policy would not apply to any projects already in the pipeline, defined as projects with development agreements and planning approvals in place or with approved building permits.
10. Targeting requirements could not be amended by City Council action during the first two years of implementation.

## ANALYSIS AND DISCUSSION OF PROPOSED POLICY

The OAHC proposal poses a number of policy issues that would need to be addressed to develop a program that is both meaningful in its accomplishments and feasible to implement. These issues are discussed below.

### Targeting

The OAHC proposal requires that 20 percent of all new housing units be made affordable to a range of incomes. For rental projects, that range is 30% to 80% of median income. For homeownership projects, the range is 50% to 100% of median income. These targets are intended to ensure that inclusionary units are made available to the range of income levels with the greatest need for affordable housing. Compared to other jurisdiction, these ranges are lower than average.

The effect of these affordability levels on the financial feasibility of development projects can be quite dramatic. Like the rest of the Bay Area, Oakland is characterized by a substantial affordability gap between market rents and sales prices compared to the ability of residents to pay for housing (using the accepted standard of 30 percent of gross income). Inclusionary requirements will reduce the income received by developers. These costs must be absorbed through a combination of three factors: (a) rents and sales prices for market rate units may be increased, if the market is strong enough to support such increases, (b) developers may receive lower rates of return on their investment, and (c) development costs would need to be reduced (for example, over time land prices may fall as developers seek to offset the cost of inclusionary housing by offering less for development sites).

In rental projects, inclusion of affordable units will reduce the rental income generated by a project. Using the OAHC proposal's targeting requirements, rents on the affordable units would require reductions of approximately \$600 to \$1,200 per unit per month below market rate (depending on the size of the unit and the market rents). Rents on the market rate units would then need to be increased by approximately \$125 to \$250 per month to make up for this lost income. In a situation of rapidly increasing rents, this might be possible. However, where market rents are not increasing rapidly, the lost rental income would require developers to reduce development costs (presumably by paying less for land) or take a lower rate of return. If the losses are too great, developers may decide that the project is not feasible compared to other investment opportunities.

Similarly, in ownership projects, the OAHC targeting requirements would require reducing sales from market prices of \$450,000 (or more) to affordable prices that range from \$100,000 to \$250,000. This would necessitate increasing sales prices on market rate units by approximately \$44,000, or nearly 10 percent. When market prices are increasing rapidly, this might be easily



absorbed; in a slow or stagnant market it would be difficult to pass on these increases to homebuyers. Alternatively, as in the case of rental housing, developers would seek to pay much less for land, or accept a lower rate of return.

*It should be noted that the substantial cost impacts of the OAH proposal are due primarily to the deep targeting to extremely low income renters and very low income homebuyers. With more modest targeting (such as smaller percentages of affordable units or shallower income targeting), the impact on developer costs would be significantly reduced.*

#### Defining Affordable Housing Costs

The OAH policy outline does not provide specific formulas for determining affordable rents and sales prices. Cities have considerable leeway in setting these limits. However, a key consideration is whether the City wants inclusionary units to be used to meet the Redevelopment Agency's obligation to ensure production of affordable housing in redevelopment areas. If this is an objective of an inclusionary policy, the rents and sales prices must be set consistent with the formulas required by State law.

In the case of homeownership, the State formula results in sales prices that are much lower than what is actually affordable to households at the target income level. The State formula contains requirements that are not consistent with actual lending policies in the private market, and use factors that assume that purchasers will qualify for mortgages in much lower amounts than they can actually obtain using conventional underwriting guidelines.

The City Council may wish to consider using State law targeting requirements, in order to satisfy the redevelopment area housing production obligations, but with the understanding that units may actually be affordable to even lower income levels. For example, units that meet the State law definition of affordable to households at 120% of median income could very likely be purchased by a range of households with incomes as low as 100 percent of median income because these households will qualify for larger mortgages than the State formula assumes. Similarly, for-sale units targeted to households at 80 percent of median are likely to be available to incomes as low as 60 percent of median.

#### Threshold Project Sizes

The OAH proposal would apply to any project containing 5 or more units. This would result in a requirement for fractional units (0.25 or 0.5 units at various income levels). In practice, this would mean that projects with fewer than 10-20 units would meet their obligation through payment of an in-lieu fee.

Inclusionary requirements may be difficult to meet on small projects, which often involve more difficult in-fill sites and have fewer economies of scale. The City Council may wish to consider a higher threshold so as not to discourage infill projects on difficult to develop sites.

Alternatives to Inclusion of Units Within a Project – Offsite Development

As is true for many inclusionary housing programs, the OAHC proposal contains provisions for affordable units to be built offsite. The proposal seeks to discourage such an approach, by requiring a higher percentage of affordable units (30 percent instead of 20) and limiting offsite construction to sites within the same school attendance area as the market rate project.

Whether or not offset construction should be permitted depends on the primary policy objective of an inclusionary housing program. Where the objective is to ensure mixed income communities and opportunities for low income residents to live in new market rate developments, *offsite development would be discouraged. Where the objective is focused more on increasing the supply of affordable housing, offsite development may be more easily justified.*

One advantage to offsite development is that the offsite units do not have to be the same type as the units in the market rate project. As an alternative to requiring a higher percentage of units for offsite construction, the City Council may want to consider allowing the same percentage if some or all of those units are targeted to large families. Most of the market-rate housing being developed in the City consists of one and two bedroom apartments and condominiums, yet there is a substantial unmet demand for affordable units with three bedrooms. A more flexible standard for offsite development could help meet this need.

Another advantage to offsite development is that affordable housing projects, serving a range of incomes from extremely low income to low or moderate income, could be developed and managed by entities that specialize in this type of housing. Market rate developers may find it more attractive to partner with an affordable housing developer to build and manage housing offsite rather than assuming the added management responsibility for onsite units.

Finally, the City Council may want to consider whether to distinguish between offsite units that are in close proximity to a market rate project (for example, within a one block radius) and offsite units that are further away. In the former case, the result would still be a mixing of incomes within a single neighborhood. If this is an important policy objective, it may make sense not to require higher percentages of affordable units for those projects.

Alternatives to Inclusion of Units Within a Project – Land Dedication

The OAHC proposal also allows developers to partially or fully meet their obligations by donating land for affordable housing development. Where land dedications are allowed, the land should be capable of supporting the requisite number of units without a change in zoning. An inclusionary housing program should also consider whether the land must already have planning entitlements for housing development, whether environmental remediation and infrastructure must be provided, and when the land needs to be made available and developed. Finally, it would be necessary to establish a reasonable basis for valuing the land contribution to determine if it fully substitutes for not building affordable units on site.

Alternatives to Inclusion of Units Within a Project – In Lieu Fees

Most affordable housing programs include a provision for payment of fees in lieu of production of affordable housing units. Key considerations include how to set those fees and in what circumstance such fees may be used. As is true for offsite production, one advantage of in-lieu fees is that it makes it possible to provide units with greater affordability and to produce units of a different type than the market rate development (such as providing 3 and 4 bedroom units for larger families).

Under the OAH proposal the in-lieu fee “shall be based on the average subsidy that was required for the previous years affordable two-bedroom/one bath and three-bedroom/two-bath for-sale units and rental units, each with an assumed affordability tenure of at least fifty-five (55) years. Assuming none of the subsidy shall come from federal, state, local or other programs.”

The OAH proposal’s terms for in-lieu fees are based on the principle that inclusionary housing programs provide affordable housing without the use of public subsidies. If the affordable units are not provided within the development project, the in-lieu fees should be sufficient to fully fill the financing gap to build those units elsewhere. Otherwise, units built with in-lieu fees would need to compete with other projects for additional subsidies from the City, the State and tax credits.

Based on current conditions, staff estimates that the financing gap to provide rental units at the affordability levels required under the OAH proposal is roughly \$250,000 to \$350,000 per unit. If the intent of in-lieu fees is to produce the same number of units that would be required on site, the in-lieu fee would need to be set at this level. This translates into a fee of roughly \$75,000 for every market rate unit constructed.

*As proposed, the OAH formula may be difficult to administer. It is not clear if the policy is referring specifically to affordable units assisted under the City’s annual Notice of Funding Availability (NOFA) process, but even if it is, there is considerable fluctuation in the kinds of projects that are proposed each year, which could cause considerable fluctuation in the calculation of the fee. It may make more sense to set an initial fee for a specific dollar amount and then index it to some external standard (for example, increases in the median purchase price of houses in Oakland from year to year).*

*Another issue to consider is whether in-lieu fees can be used instead of all required production, or only a portion of it, in order to ensure that some mixed income development takes place. Some cities limit the use of in-lieu fees only to situations where the targeting formula results in a fraction of a unit being required. For example, a 20 percent inclusionary requirement on an 82-unit project would require 16.4 affordable units. A developer might be required to include 16 units and pay a fee equal to 0.4 times the in-lieu fee for a whole unit. Another alternative would be to limit the payment of in lieu fees to smaller projects but require inclusion of affordable units in projects larger than a threshold size (such as 50 or 100 units).*

Finally, the OAH proposal specifies that in lieu fees can only be used to subsidize development of units for extremely low income and very low income households. This would result in the production of fewer units than would be included onsite, but would ensure that funds are directed to those households that have already been identified by the City as having the most severe housing needs.

#### Should Public Financing Be Allowed?

A closely related question is whether public financing (particularly City or Redevelopment Agency financing) should be allowed for the inclusionary units. Where the intent of an inclusionary housing program is to produce additional units beyond what is already being produced by the City's affordable housing program, it would make sense not to allow public financing. At the same time, it must be noted that there may be projects where the Redevelopment Agency is already providing financing just to encourage development of market rate units, particularly some of the transit village projects where there are substantial land assembly and infrastructure costs. For these projects, prohibitions on the use of public funds could make the entire project infeasible. Moreover, the source of financing for these projects may be the tax increments generated by the project itself. In this situation, the project would not be competing with other projects for the same resources, because the tax increment in question won't be generated at all unless the project goes forward.

#### Incentives

As noted above, many jurisdictions offer incentives to developers to make it more feasible to meet inclusionary requirements. By far the most common incentive is the granting of density bonuses, used in over 90 percent of all jurisdictions. Density bonuses, which are required by State law, allow developers to exceed the density allowed by zoning in return for providing a specified proportion of affordable housing units. Density bonuses are especially effective in areas where zoning provides only for low densities; the ability to build more units can significantly reduce the per unit cost of land and thereby make development less expensive. Density bonuses have been less effective in Oakland, where most residential development is below the densities allowed under zoning and the General Plan, and therefore can not benefit from a density bonus.

Other incentives include fast-track processing, design flexibility, waiver, reduction or deferral of permit and development impact fees, and direct subsidies. As a result, in many cases jurisdictions are actually paying at least some of the cost of subsidizing inclusionary units through direct assistance or through foregone revenues.

The City already provides fast-track processing for major housing developments. Parking standards for denser multi-family housing are already set at just one space per residential unit, so there is little room for further reductions as an incentive (developers have reported that most

lenders will require at least one space per unit even if the City doesn't). The City does not assess any development impact fees on residential projects, so waiver of these fees is not applicable.

#### Timing of Implementation

OAHC's proposal would provide for a phase-in or delay of implementation by exempting any project that already has a building permit or land use entitlements in place. This would exclude a number of projects, but would also avoid changing rules on developers who have already invested substantial time and money in projects based on a set of assumptions that did not include an inclusionary housing required. If the City Council wanted to implement an inclusionary housing program, one way to cover more units without unfairly penalizing developments already in the pipeline would be to require lower targeting requirements (smaller percentages of units or shallower income targeting) for projects already approved but not yet built.

#### Administration, Monitoring and Enforcement

Cities that have had inclusionary programs in place for many years report that they continue to experience difficulties administering the program. Implementation of an inclusionary housing program would require staff resources to:

- Review proposed inclusionary housing plans prior to granting planning and building approvals
- Draft and record the necessary documents to record restrictions and place legally binding obligations on the developers
- Ensure that inclusionary units are built on time and as specified
- Perform ongoing monitoring of rental projects to ensure that rents are set correctly, tenants are being properly screened for eligibility, and projects are properly managed and maintained
- Provide loan servicing functions for homeownership units, including monitoring sales and conducting prior review that to ensure new buyers meet the income guidelines.

A successful program could greatly increase the workload for these functions. Staff recommends that the City Council consider including some kind of annual monitoring fee into any inclusionary housing program.

### **RECOMMENDATIONS AND QUESTIONS TO BE ADDRESSED**

It is important to note that the development of any inclusionary housing program should start with a clear statement of the policy objectives of that program. Without resolving these issues, it will be difficult to draft a well-reasoned and workable program.

Item: \_\_\_\_\_  
Community and Economic Development Committee  
April 25, 2006

Staff recommends that the City Council consider the policy questions raised in this report and provide staff with clear guidance that would shape any inclusionary housing program. In particular, staff recommends:

- Clarify the objective of an inclusionary housing program. Different program designs will be called for depending in particular on whether the most important objective is to provide mixed-income developments or to generate new affordable housing units irrespective of location.
- Consider conducting a financial impact analysis. It is typical for jurisdictions considering an inclusionary housing program to hire consultants to perform a detailed analysis that looks at multiple development scenarios and identify what levels can be sustained by market rate projects without discouraging continued development. If an assessment of the impact of inclusionary zoning on market rate development is desired, staff recommends the use of an outside consultant with extensive knowledge and experience with privately financed market-rate development projects in Oakland.
- Staff strongly recommends that any inclusionary program adopt definitions of affordable housing that are consistent with California Redevelopment Law to ensure that units produced under an inclusionary housing program can be counted as satisfying the redevelopment housing production requirement. Because of substantial development now occurring in several of the City's redevelopment areas, the Redevelopment Agency will be responsible for ensuring the development of over 1,000 units of housing affordable to low and moderate income households, including almost 500 units for very low income households, within the Coliseum, Broadway/MacArthur/San Pablo, Oakland Army Base, Central City East, West Oakland and Oak Knoll redevelopment areas. If the Agency were required to subsidize these units, the cost could exceed \$150 million over the next 10 years and would require the ability to leverage substantial sums from other non-local subsidy programs.

Inclusionary housing programs should be viewed as one component of a city's overall housing strategy. Depending on local circumstances, inclusionary programs might not meet the full spectrum of needs. Inclusionary programs may work well as a complement to other affordable housing efforts, including preservation of existing assisted housing, development of new assisted housing with public subsidies, first-time homebuyer assistance, rehabilitation loans for low income homeowners, and the public housing and Section 8 programs operated by housing authorities and targeted to the very lowest income households.

Oakland currently invests substantial amounts of money to assist in the development of affordable housing, most of it to very low and low income households. An inclusionary housing program should be used to augment these programs, not supplant or replicate them. For example, an inclusionary housing program that targets low and moderate income homeownership can help address an identified gap in the City's delivery system, but also would then allow the City to target its limited affordable housing dollars to extremely low and very low income households while still maintaining balance across its overall housing program.

### SUSTAINABLE OPPORTUNITIES

Economic The economic impact of inclusionary zoning is difficult to gauge. There are no empirical studies, but the experience of other cities that have inclusionary requirements suggests that a well crafted inclusionary housing program does not reduce development activity.

Environmental Inclusionary zoning can serve to further sustainable development and smart growth policies by encouraging higher density development in appropriate locations, when zoning constrains density. This is because inclusionary units are often made feasible through such mechanisms as density bonuses and higher density development. In areas of Oakland, where allowable density is not a barrier, there would be little environmental benefit because inclusionary zoning probably would not lead to higher densities.

Equity Inclusionary zoning promotes greater housing opportunities for economically disadvantaged segments of the population. In addition, by producing mixed income housing, it contributes to a more equitable distribution of affordable housing and may help to reduce concentrations of lower income people while also providing safeguards against displacement caused by development in gentrifying areas.

**Comment:** This section describes the sustainable opportunities that are being addressed or will be implemented. It includes a brief description short or long-term sustainable opportunities that have been designed or included in the project or activity, and/or short- or long-term benefits that will result from the action. Please refer to the Agenda Management Process Manual for more detailed information about writing this section.  
Economic: (E.g., types of jobs that will be generated in the local economy, likelihood that Oakland residents will be hired, sales taxes or other revenues for the City, expanded housing inventory, or degree of local ownership)  
Environmental: E.g., waste reduction, energy efficiency, or minimized use of toxic materials.  
Social Equity: E.g., benefits to the immediate neighborhood, increased services to disadvantaged areas, or enhanced recreational or social venues.

### DISABILITY AND SENIOR CITIZEN ACCESS

To the extent that inclusionary zoning results in production of more affordable housing, it will also produce more affordable housing opportunities for low income seniors and persons with disabilities.

**Comment:** This section describes benefits and impacts for the disability and senior citizen communities and compliance with the Americans with Disabilities Act (ADA) and the Older Americans Act, and other applicable laws. Please refer to the Agenda Management Process Manual or call CMO/ADA Programs at 238-4754 for technical assistance with this section.

**ACTION REQUESTED OF THE CITY COUNCIL**

No action is requested of the City Council at this time. If an inclusionary program is considered for Oakland, Staff recommends that the City Council clarify some of the policy questions in this report and then direct staff to develop a program consistent with those policies.

Respectfully submitted,

**Comment:** This section states the particular action staff is requesting of the City Council (for example, "Staff [or Agency] recommends that the City Council approve the resolution adopting the Imperial Park Master Plan"). If the recommendation is complex or lengthy, separate it into a series of numbered items or bullet points.

**DANIEL VANDERPRIEM**

Director of Redevelopment, Economic  
Development and Housing

Reviewed by:  
Sean Rogan, Director of Housing and  
Community Development

Prepared by:  
Jeffrey P. Levin, Housing Policy and  
Programs Coordinator  
Housing & Community Development Division

APPROVED AND FORWARDED TO THE  
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:

**OFFICE OF THE CITY ADMINISTRATOR**

Item: \_\_\_\_\_  
Community and Economic Development Committee  
April 25, 2006



**Attachment A**

***Inclusionary Zoning Policy Recommendations***

Submitted by the **Oaklanders for Affordable Housing Coalition**, a broad coalition of community based organizations that have come together to address the housing crisis. They include: Oakland Community Organizations, the Alameda County Central Labor Council, East Bay Alliance for a Sustainable Economy, ACORN, East Bay Asian Youth Center, Asian Pacific Environmental Network, the Green Party, Public Advocates, Just Cause, Urban Strategies Council, and the Greenbelt Alliance, and the Non-Profit Housing Association

**Policy Elements**

1. **Policy would apply to all Residential Developments with 5 units or above**
2. **Rental/Ownership Split:** The policy would allow a developer to meet its inclusionary requirements EITHER by building rental units or homeownership units according to the following income requirements
3. **Overall Percentage & Levels of Affordability**

**On-Site Inclusionary Requirement for Rental Projects**

20% Requirement

5% at < 30% AMI (\$24,850 family of four)

10% at < 50% AMI (\$41,400 family of four)

5% at < 80% AMI (\$66,250 family of four)

OR

Developers have the option of satisfying the affordable unit requirement by providing 9% of the units at 30% AMI

**Exemptions:** Non Profits Housing Developers who are building projects that are 100% affordable would be exempt from the inclusionary requirement

**On Site Requirements for home ownership projects**

20% Requirement

5% at < 60% AMI (\$49,680 family of four)

10% at < 80% AMI (\$66,250 family of four )

5% at < 100% AMI (\$82,200 family of four )

OR

Developers will have the option of satisfying the affordable unit requirement providing 9% of the units at 60% AMI

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Community and Economic Development Committee  
April 25, 2006

**Exemptions:** Non-Profit Housing Developers who are building projects that are 100% affordable would be exempt from the inclusionary requirement

**Off-Site Inclusionary Requirements for Rental Projects**

30% Requirement

- 5% at < 30% AMI (\$24,850 family of four)
- 15% at < 50% AMI (\$41,400 family of four)
- 10% at < 80% AMI (\$66,250 family of four)

**Location:** If the developer chooses the alternative of building the affordable units off site, the off site units will be required to be in the same school attendance area

**Exemption:** Non-Profit Housing Developers who are building projects that are 100% affordable would be exempt from the inclusionary requirement

**Off-Site Inclusionary Requirements for Homeownership Projects**

30% Requirement

- 5% at < 60% AMI (\$49,680 family of four)
- 15% at < 80% AMI (\$66,250 family of four)
- 10% at < 100% AMI (\$82,200 family of four)

**Location:** If the developer chooses the alternative of building the affordable units off site, the off site units will be required to be in the same school attendance area

**Exemption:** Non-Profit Housing Developers who are building projects that are 100% affordable would be exempt from the inclusionary requirement

4. **Incentives:** Fast tracking permit process; open to other options suggested by staff and council
5. **Length of affordability**  
Recommended @ 55 years
6. **Provides a phase – in period**
  - a. Projects with development agreements and planning approvals in place or with approved building permits shall be exempt from these requirements
7. **Mechanisms of Compliance**

A. In Lieu Fees: the in-lieu fee to be paid for each market-rate dwelling unit shall be 20% of the subsidy needed to create an affordable unit in a typical attached-housing unit. The City Council will set the in-lieu fee annually. The fee shall be based on the average subsidy that was required for the previous years affordable two-bedroom/one bath and three-bedroom/two-bath for-sale units and rental units, each with an assumed affordability tenure of at least fifty-five (55) years. Assuming none of the subsidy shall come from federal, state, local or other programs.

- In lieu fee will apply to rental or homeownership
- In lieu fees paid into the housing trust fund will be earmarked for extremely low and very low income units; they may not be used for low or moderate income housing or for non-housing purposes

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Community and Economic Development Committee  
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- The in lieu fee provision will be insulated from the amendment process so that if city council changes the income targeting the in lieu fee will still be based on the cost of building 20% of the units

B. Off Site Option: if the developer uses the off site option see the increased off site overall percentage listed above

C. Land Dedication: developer can choose to dedicate land from his/her purchased property and partner with a non-profit developer or the city to build the affordable housing

**8. Amendment Process**

- The city council may not amend the income targets/percentages for 2 years in order to give the initiative a chance to work and establish a track record

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This section (a) specifies the fiscal impacts of staff's recommended actions and (b) analyzes those impacts. It includes analysis of the following items when applicable:

- One-time costs
- Sustained annual costs
- Matching costs
- Sources of funding and requisite account codes, as applicable (fund, org., account, project)
- Anticipated revenues and requisite account codes, as applicable (fund, org. account, project)
- Staffing requirements (*FTE costs for hiring new staff or for reassigning existing staff*)
- Overhead costs or disallowed costs
- Total funding to date, with major funding sources, and total projected budget, if the report is related to a long-term effort or project.

*Note: An "Informational Report", unlike other types of agenda reports, does not recommend action and therefore does not include fiscal impacts. Although the "Fiscal Impacts" section must be included in an "Informational Report," it should simply contain the following sentence: "Since this report is informational only, no fiscal impacts are included." To avoid redundancy, the "Summary:" section should not contain this sentence. Beware of "Informational Reports" with hidden impacts or with no impacts now, but future impacts.*

This section contains only that information necessary to provide readers with a foundation for understanding the content in the rest of the report. It should include a brief legislative history of the policy discussed in the report. It should also include significant historical events such as public hearings, City Council discussions, and meetings with other public agencies. (These types of events are significant if issues in the report are especially important to the public.)

This section may include a brief description of the process used either to identify the "Key Issues" or to develop the "Recommendations" presented in the report. For example, if key issues were identified as the result of meetings with the public, the process by which staff obtained community input should be documented. (In this example, the section might include the following comments: "The Agency held 6 public meetings in strategic locations in West Oakland, East Oakland, and the Foothills with a total of 300 community members in attendance. Following is a summary of the information we gathered from those meetings.")

*Note: Avoid redundancy in Background, Key Issues, and Program Description sections. Each section should lead into the next, but do not repeat the same points*

This section (a) identified key issues ("problems" or concerns") surrounding the policy, program, or project discussed in the report; (b) analyzes significant impacts of those issues; and (c) explains the need for appropriate corrective action.

This section includes discussion of the following issues, when applicable, and the significant impacts of those issues:

Legal	Public safety
Legislative	Local economy
Regulatory	Quality of life
Environmental	Reduction or expansion of City services

*Note: "Impacts" can be discussed in two separate agenda report sections: "Key Issues and Impacts" and "Recommendation(s)." Discussion of impacts in "Key Issues" focuses on effects that have resulted (or may result) from the issues, problems or concerns staff is identifying. By contrast, discussion of impacts in the "Recommendation(s)" section focuses on effects that may result from the actions staff is recommending to resolve the identified problems or concerns.*

# Attachment F

## City Attorney's Memo

### June 27, 2006



2006 JUN 22 PM 8:09

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney  
John A. Russo  
City Attorney

June 27, 2006

(510) 238-3601  
FAX: (510) 238-6500  
TTY/TDD: (510) 238-3254

HONORABLE CITY COUNCIL

**Re: Items 14.4, 14.4.1 and 14.4.2 – Inclusionary Housing Ordinance**

President De La Fuente and Members of the City Council:

At the June 27, 2006 meeting, the City Council will consider adopting an inclusionary housing ordinance. Before the Council are several proposals.

- An ordinance that would amend the Planning Code (Item 14.4)
- Amendments to the Proposed Ordinance from Councilmember Brunner that would amend the Oakland Municipal Code (Item 14.4.1)
- An amendment proposed by Councilmember Reid (Item 14.4.2) as follows:

“Add new section 12; renumber existing Section 12 to section 13

Section 12. This ordinance shall not apply in any redevelopment project area where more than 75% of the land within that redevelopment project area, as that area is designated as of the date of the adoption of this ordinance, is developed pursuant to a master plan of development that satisfies the affordable housing production requirements of Health and Safety Code section 33413.”

The amendment proposed by Councilmember Reid references the Health and Safety Code section which has affordable housing requirements. The inclusionary obligations in the proposed ordinances and the affordable housing requirements under Health and Safety Code Section 33413 are different in a number of significant ways, including but not limited to:

1. First, Section 33413, unlike the ordinances, does not necessarily require that affordable units be set aside in each private, market rate project; the obligation is imposed on the redevelopment agency, not developers, to be met project area-wide over a 10 year period.

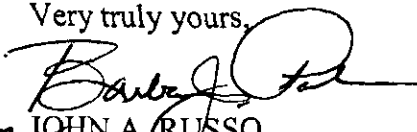
2. Second, while both Section 33413 and the proposed ordinances generally require 15% of units to be affordable, the affordability levels are different.

Section 33413 requires that 9% of residential units be affordable to low to moderate incomes (i.e., 120% of area median income), and 6% be affordable to very low incomes (i.e., 50% of area median income), whether units are rental or ownership.

Councilmember Brunner's amendments require that 9% of rental units be affordable to low incomes (i.e. 80% of area median income) and 6% to very low incomes, while all ownership inclusionary units are affordable to households at 110% of area median income.

3. Third, Section 33413 allows units that receive City or Agency subsidy to be counted toward meeting the affordable housing requirement. Generally, the proposed ordinances do **not** permit units receiving any City or Agency subsidy to be counted toward a developer's inclusionary requirement.
4. Fourth, the laws have different requirements for providing affordable units off-site. Under Section 33413, twice as many affordable units must be provided if the units are off-site (i.e., instead of 15%, there is a 30% requirement if the units are off-site.) The ordinances require that off-site affordable units be provided at a 20% level rather than a 15% level.

Very truly yours,

  
for JOHN A. RUSSO  
City Attorney

Attorney Assigned:  
Daniel Rossi

Document # 376273

# Attachment G

## Councilmember Brunner's Memo

### June 27th, 2006



To: Oakland City Council  
From: Councilmembers Jane Brunner, Ignacio De La Fuente and Jean Quan  
Re: **Proposed Modifications to the Inclusionary Housing Ordinance**  
Date: June 27, 2006

---

City staff has submitted a draft Inclusionary Housing Ordinance for consideration by the City Council at its meeting on June 27, 2006.

We are proposing that a number of modifications be made to the ordinance.

The Inclusionary Housing Requirements should be adopted as an amendment to the Oakland Municipal Code, immediately following the Jobs/Housing Impact Fee and Affordable Housing Trust Fund provisions, and all sections should be renumbered appropriately.

The following changes are shown in standard redline format (~~strike-out of deleted language~~ and underscore of new language) over the original document text.

1. Title of Ordinance

AN ORDINANCE ADDING CHAPTER ~~15.70~~ TO THE OAKLAND MUNICIPAL CODE TO ESTABLISH AN INCLUSIONARY HOUSING REQUIREMENT AND ESTABLISH TWO NEW HOMEOWNERSHIP PROGRAMS FOR OAKLAND TEACHERS, ~~AMENDING SECTION 15.68.100 OF THE OAKLAND MUNICIPAL CODE TO PERMIT AFFORDABLE HOUSING TRUST FUNDS TO BE USED TO ADMINISTER AND ENFORCE THE INCLUSIONARY HOUSING REQUIREMENT, AND AMENDING THE MASTER FEE SCHEDULE TO ESTABLISH AN INCLUSIONARY HOUSING IN-LIEU FEE~~

Deleted: 17.109

Deleted: PLANNING

Deleted: MAKING RELATED AMENDMENTS TO THE OAKLAND PLANNING CODE.

2. First "Whereas" clause on page 3:

WHEREAS, the Inclusionary Housing Ordinance will provide rental units affordable to households earning no more than 80 percent of area median income and to households earning no more than 50 percent of area median income, and ownership units affordable to moderate income households with an income of no more than 110 percent of area median income, thus allowing the City to target its limited affordable housing dollars to extremely low, very low and low income households who have the greatest housing needs and require the greatest subsidies; and

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ORA/COUNCIL  
14.4  
June 26, 2006  
27

3. Definitions (Section 17.109.020)

"Affordable housing" means a housing unit that is provided at an affordable rent to low income households or to very low income households, or sold at an affordable sales price to moderate income households with an income of not more than 110% of area median income as further described in Section 15.70.100 (Affordability Level and Housing Cost),

Deleted: average  
Deleted: 100  
Deleted: 17.109  
Deleted:  
Deleted: the maximum allowable income specified in Section 17.109.100 (Affordability Level and Housing Cost)

"Affordable housing cost" means an annual housing cost that does not exceed 35 percent of 110 percent of AMI, adjusted for family size appropriate to the unit pursuant to California Health and Safety Code Section 50052.5, and is not less than 28 percent of the actual gross income of the household. "Housing cost" shall include those items set forth in 25 California Code of Regulations Section 6920.

"Affordable rent for low income households" shall mean a gross rent, including an allowance for tenant-paid utilities, that does not exceed 30 percent of 80 percent of AMI adjusted for family size appropriate to the unit.

"Affordable rent for very low income households" shall be as defined in California Health and Safety Code Section 50053(b)(2), and its implementing regulations.

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"Very low income household" shall be as "very low income household" is defined in California Health and Safety Code Section 50105 and its implementing regulations.

4. Applicability of the Ordinance (Section 17.109.030)

This chapter shall apply to all housing units in covered development projects with 20 or more new housing units, unless the covered development project has acquired or will acquire vested rights to develop under California law on or before September 30, 2006, or unless the covered development project receives a discretionary land use approval by the City not later than 12 months from the date of final adoption of the inclusionary Housing Ordinance provided that a building permit is issued for such housing units not later than 18 months from the date the first such discretionary land use approval is received for the project, or unless the covered development project qualifies for an exemption listed in Section 15.70.040 (Exemptions).

Deleted: May 1, 2007  
Deleted: 17.109

5. Requirements for Off-Site Inclusionary Units (Section 17.109.060)

A project applicant may elect to build affordable housing units on a site other than the site of the principal project to satisfy the requirements of this chapter. If the project applicant selects this alternative, the number of affordable units developed off-site must be no fewer than 20 percent of all housing units constructed on the principal project site. Off-site units shall be subject to all applicable provisions of this chapter,

Deleted: , and shall have the same tenure (rental or ownership) as the housing units in the principal project

6. Comparability of Inclusionary Units (Section 17.109.100)

The number of inclusionary units of each size, as measured by number of bedrooms per unit, shall be at least proportional to the number of market rate units of each size in the principal project, as measured by number of bedrooms per unit. ~~The construction type, tenure (rental or ownership), square footage and interior features of inclusionary units do not need to be the same as or equivalent to those in market rate units in the principal project, provided they are of standard construction grade quality, approved by the City, and consistent with then-current standards for new affordable housing.~~ Project applicants shall endeavor to distribute the inclusionary units proportionately among the market rate units, avoid concentration of inclusionary units, and avoid taking actions that would stigmatize or set apart the inclusionary units.

~~Deleted: Inclusionary housing units shall be comparable to market rate units in the principal project.~~

~~Deleted: Exterior appearance and overall quality of construction of the inclusionary units shall be comparable to the market rate units in the principal project.~~

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7. Affordability Levels and Housing Cost (Section 17.109.110)

Rental units

~~For each covered development project, at least 40 percent of the inclusionary units required by this chapter that are rental housing units must:~~

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- (1) ~~be rented to and occupied only by very low income households;~~
- (2) ~~have rents that do not exceed an affordable rent for very low income households (30% of 50% AMI); and,~~
- (3) ~~be subject to these restrictions on tenant incomes and affordable rents for a period of at least 55 years from the date of initial occupancy.~~

~~Deleted: have rents that do not exceed an affordable rent for a low income household adjusted for family size appropriate for the unit pursuant to California Health and Safety Code 50053(b)(3); and~~

~~For each covered development project, the remaining inclusionary units required by this chapter that are rental housing units must:~~

- (1) ~~be rented to and occupied only by low income households;~~
- (2) ~~have rents that do not exceed an affordable rent for low income households (30% of 80% AMI); and~~
- (3) ~~be subject to these restrictions on tenant incomes and affordable rents for a period of at least 55 years from the date of initial occupancy.~~

Ownership units:

~~Inclusionary units required by this chapter that are ownership units must:~~

- (1) ~~be sold only to households that have incomes that do not exceed 110 percent of AMI;~~

~~Deleted: ownership~~

~~Deleted: in accordance with the schedule below, be subject to limitations on the maximum allowable income of households buying the inclusionary units such that the mean limit on incomes of households buying ownership inclusionary units produced for a covered development project does not exceed 100 percent of AMI~~

- (2) be sold at an affordable sales price; and
- (3) be subject to these restrictions on affordable sales prices and buyer incomes for a period of at least 45 years from the date of initial sale.

Deleted: In accordance with the schedule below

Low income purchasers of inclusionary units that are ownership units shall be permitted by the seller of the unit to utilize homebuyer assistance provided by the City or Agency.

Deleted: . Affordability schedule for ownership units:  
Maximum Household Income ... [1]

#### 8. Effective Date of Ordinance (Section 12 of Ordinance)

*This Ordinance shall be effective upon its adoption if it receives at least six affirmative votes; otherwise, it shall be effective upon the seventh day after final adoption; but as set forth above shall not be applied to (a) covered development projects that have acquired or will acquire vested rights to develop under California law on or before September 30, 2006, or (b) housing units in covered development projects that obtain a discretionary land use approval by the City not later than 12 months from the date of final adoption provided that a building permit is issued for such units not later than 18 months from the date the first such discretionary land use approval is received for the project.*

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14.4  
June 26, 2006  
27

# Attachment H

## Councilmember Reid's Memo

### June 21st, 2006

OFFICE OF THE CITY CLERK

CITY OF OAKLAND



2006 JUN 21 PM 12:37

CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

LAURENCE E. REID  
President Pro Tempore of the City Council  
Councilmember District #7

(510) 238-7007  
FAX (510) 238-6910

June 21, 2006  
To: Office of the City Clerk  
From: Council Member Larry Reid

Please substitute this language for the submission of language that was previously submitted

**Add new section 12; renumber existing Section 12 to section 13**

**Section 12. This ordinance shall not apply in any redevelopment project area where more than 75% of the land within that redevelopment project area, as that area is designated as of the date of the adoption of this ordinance, is developed pursuant to a master plan of development that satisfies the affordable housing production requirements of Health and Safety Code section 33413.**

Respectfully submitted,

A handwritten signature in cursive script that reads "Larry E. Reid".

Larry E. Reid  
Council Member  
District 7

# Attachment I

## CEDA Staff Report

### June 13th, 2006

**CITY OF OAKLAND**  
**AGENDA REPORT**

OFFICE OF THE CITY CLERK

2006 MAY 31 PM 5:11

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Community and Economic Development Agency  
DATE: June 13, 2006

RE: **An Ordinance Adding Chapter 17.109 To The Oakland Planning Code To Establish An Inclusionary Housing Requirement And Establish Two New Homeownership Programs For Oakland Teachers, Making Related Amendments To The Oakland Planning Code, Amending Section 15.68.100 of the Oakland Municipal Code, And Amending The Master Fee Schedule To Establish An Inclusionary Housing In-Lieu Fee**

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**SUMMARY**

In response to direction from the City Council's Community and Economic Development Committee, staff has prepared a proposed Inclusionary Zoning Ordinance. The ordinance follows the parameters of the proposal announced by Councilmembers Brunner, De La Fuente, and Quan on April 24, 2006.

Given the continued strength of the City's housing market and the pace of new development of market rate housing, it appears that market conditions are conducive to adoption of an inclusionary housing program similar to what is already in place in over 100 California cities and counties.

*The proposal announced by Councilmembers Brunner, De La Fuente and Quan takes many of its parameters from San Francisco's inclusionary housing ordinance, and staff has used that ordinance as a starting point for crafting the particulars of the proposed Oakland ordinance. This is especially true with respect to the percentage of units required on site and off site, the affordability levels, and the methodology for calculating in-lieu fees. The proposed ordinance is consistent with the approach and parameters used by many other jurisdictions throughout the State. A summary of the key provisions of the ordinance is contained in Attachment A.*

The proposed ordinance also contains two new innovative programs designed to provide affordable homeownership opportunities for teachers who commit to teaching in the Oakland Unified School District for at least five years. One program would require that a portion of inclusionary homeownership units be marketed to teachers. The second program would use 20 percent of any in-lieu fees generated by the inclusionary housing requirements to provide loans to assist teachers purchase homes. Both programs would provide increasing shares of the appreciation in the homes to borrowers after the initial five year period ends.

Item: \_\_\_\_\_  
CED Committee  
June 13, 2006



The proposed Inclusionary Housing Ordinance will add another component to the City's wide range of programs designed to address the affordable housing needs of Oakland's low and moderate income residents. While inclusionary housing can not meet the full spectrum of the City's affordable housing needs, it will work well as a complement to other affordable housing efforts including development of new and preservation of existing affordable housing; first-time homebuyer assistance; rehabilitation loans for homeowners; and the public housing and Section 8 programs operated by the Oakland Housing Authority. By requiring developers of market-rate housing to include housing affordable to low and moderate income households, the City can promote the goal of providing economic integration in neighborhoods experiencing substantial development. Inclusionary housing can also allow the City to focus its own affordable housing funds on extremely low and very low income households who have the greatest housing needs, but also require affordability levels that are generally below what is economically feasible for inclusionary zoning.

## **FISCAL IMPACT**

The full fiscal impact of the proposed ordinance is difficult to assess. Because it will require housing units that otherwise would be market rate to be sold or rented at affordable rates, it will result in a small and probably negligible decrease in revenues from property taxes and real estate transfer tax. To the extent that developers choose to pay an in-lieu fee instead of building inclusionary units, there will be no impact on tax revenues, and the City will receive substantial new revenue that will allow it to develop more affordable housing.

Revenues from collection of the in-lieu fee will be deposited to the Affordable Housing Trust Fund (Fund 7450) originally established when the Jobs/Housing Impact Fee was enacted. Those funds are reserved for affordable housing activities and appropriations must be approved by the City Council.

Implementation and enforcement of the ordinance will require staff resources in the Community and Economic Development Agency and the Office of the City Attorney. No additional staffing is proposed at this time and initially the program costs will be absorbed by existing programs. As the inclusionary housing program grows, additional staff costs can be recovered from a portion of the in-lieu fee revenue.

## **BACKGROUND**

The issue of inclusionary zoning and suggestions that Oakland adopt such a policy has come before the City Council on a number of occasions.

The Final Report of the Housing Development Task Force, which was adopted by the City Council in July 2000, included a recommendation to adopt an inclusionary zoning ordinance.

On May 15, 2001, staff presented the City Council with an overview of inclusionary zoning programs and the issues associated with the feasibility of implementing such a program in Oakland.

In December 2003, staff provided the City Council with a summary of key findings of a comprehensive survey of inclusionary zoning published by the Non-Profit Housing Association of Northern California (NPH) and the California Coalition for Rural Housing (CCRH). That study is the most thorough study of inclusionary zoning in California conducted in over a decade. While NPH is currently working to update the data, it remains the most definitive source of information regarding existing inclusionary policies and programs in cities and counties throughout the state.

On April 25, 2006, staff presented to the Community and Economic Development Committee an informational report regarding an inclusionary housing policy proposed by the Oaklanders for Affordable Housing Coalition. At that time, the Committee directed staff to return with an ordinance to implement a proposal that was announced on April 24, 2006 by Councilmembers Brunner, De La Fuente and Quan.

## **KEY ISSUES AND IMPACTS**

The City faces a number of inter-related affordable housing issues that will be addressed in part by the proposed ordinance.

### Unmet Housing Needs

The City's Consolidated Plan for Housing and Community Development identifies substantial housing needs of existing residents, particularly those with very low, low and moderate income. Over 30,000 very low and low income households experience housing problems including overcrowding, substandard conditions and overpayment (housing costs greater than 30 percent of household income).

### Housing to Accommodate New Growth

The City's Housing Element identifies projected housing needs for the period 1999 through 2006 (the state has recently extended the time frame by an additional two years through mid-2008). The City's Regional Housing Need Allocation calls for production of over 7,700 units. Over 3,000 of these units must be affordable to very low and low income people. While the State's Housing Element law does not require the City to build these units, it does require that the City ensure that there are adequate sites with appropriate zoning to meet this need, and it requires that the City remove public policy barriers and develop and implement affirmative programs to meet its housing needs, including the need for affordable housing.

### Redevelopment Law Requirements

Under California Redevelopment Law, redevelopment project areas adopted after 1976 are subject to a requirement to include affordable housing in the project areas. These requirements mandate that 15 percent of all housing units newly constructed or substantially rehabilitated in the project area over a 10-year period must be affordable and targeted to low to moderate income households, with at least 6 percent of units targeted to very low income households. The law requires that affordable units be built within the project area, but does not necessarily require that units be included within each market rate project in the project area. (It is possible to provide the units outside the project area, but twice as many units are required in that case.) Oakland has a number of redevelopment project areas subject to these requirements: Coliseum, Broadway/MacArthur/San Pablo, Oakland Army Base, West Oakland, Central City East and Oak Knoll. Many redevelopment agencies use inclusionary housing programs to meet this requirement, and the redevelopment plans for these project areas all authorize the Agency to impose inclusionary requirements on market rate projects to meet the area production requirements.

At present a number of large residential development projects are either underway or proposed in these areas. These projects collectively contain over 7,500 housing units, and will generate an obligation for production within these redevelopment areas of over 1,000 units of affordable housing, including nearly 500 units for very low income households.

### Promotion of Mixed-Income Development

Inclusionary requirements are specifically designed to encourage residential development that includes housing for a range of income levels. Inclusionary requirements for redevelopment areas are applied to the entire redevelopment area, and inclusionary zoning laws require income mixing within individual developments. Inclusionary housing can serve as an important mechanism for providing fair housing opportunities for minorities outside areas of racial concentration and can help promote a deconcentration of low income people by providing opportunities to live in neighborhoods that would otherwise consist largely of middle- and upper-income households.

### Inclusionary Housing Programs in California

Inclusionary housing programs have been in place in California for over 30 years. As of March 2003, 107 jurisdictions had some kind of inclusionary housing program, and the rate of adoption has increased over the past ten years as cities and counties have sought innovative ways to meet their affordable housing needs.

Many jurisdictions, particularly the larger cities, use inclusionary housing programs to complement and augment their other housing efforts. Typically, inclusionary programs do not meet the full spectrum of needs. Other programs and funding sources, such as Federal grant funds and redevelopment agency housing set-aside funds, are used to provide deeper subsidies to develop and preserve housing affordable to income levels lower than are feasible to reach through inclusionary programs.

While there is considerable variation in these programs, some general features can be described:

- Half of all programs require at least 15 percent of units to be affordable; including roughly one-fourth that require 20 percent or more.
- Most programs target low income (50% to 80% of median income, or between \$38,000 and \$60,000 for a three-person household) and moderate income (80% to 120% of median income, or between \$60,000 and \$90,000 for a three-person household). Just under half of all programs provide some targeting to very low income households (30% to 50% of median income, or between \$23,000 and \$38,000 for a three-person household). Targeting to extremely low income households (less than 30% of median income, or less than \$23,000 for a three-person household) is not commonly found.
- Rental housing is generally targeted to very low and low income, while ownership housing is generally targeted to low and moderate income.
- Most jurisdictions require long-term affordability covenants. Many cities have amended their programs to ensure that projects remain affordable for at least as long as required for affordable housing under California redevelopment law (45 years for homeownership, 55 years for rental).
- Many jurisdictions exempt smaller projects (ranging from 3 to 10 units) from inclusionary requirements, while others require in-lieu fees to be paid for smaller projects. Some jurisdictions require larger percentages of affordable housing for larger development projects.
- Many jurisdictions require that affordable units be built at the same time as market rate units.
- Most programs provide for alternatives to on-site construction within the market-rate project. Common alternatives include off-site construction, land dedication, and payment of in-lieu fees.
- Most jurisdictions provide incentives to developers to help offset the cost of providing affordable units. The most common incentive is density bonuses that allow projects to exceed the allowable density in order to provide affordable units by reducing the per unit costs of development. Other incentives include fast track processing; direct subsidies; design flexibility and relaxation of development standards; and fee waivers, reductions or deferrals. In some jurisdictions, inclusionary units may be of a smaller size or may require only standard grade

finishes and features to reduce their cost. Some larger cities, such as San Diego and San Francisco, do not provide incentives.

## **DESCRIPTION OF PROPOSED INCLUSIONARY HOUSING PROGRAM**

The proposed ordinance is consistent with best practices in other California jurisdictions. It includes the following provisions.

### Applicability

The policy would apply to any development project that creates 20 or more housing units. Lofts and live/work units are included. The ordinance will not apply to projects that secure "vested rights" to develop prior to May 1, 2007. Under current California law, a project acquires "vested rights" in one of three ways: (1) the developer and the city enter into a development agreement pursuant to the California Government Code for the project, (2) the developer obtains a vesting tentative map under the California Government Code for the project, or (3) the developer obtains a building permit for the project and has performed substantial work and incurred substantial liabilities in good faith reliance on the permit.

### Exemptions

*Certain types of development projects would be exempt from the ordinance:*

- Transit village developments (i.e., projects within 1,000 feet of a BART station) that are subject to Disposition and Development Agreements or Owner Participation Agreements with the City or Agency.
- Affordable housing projects that are funded through the City's competitive process for funding affordable housing (the annual Notice of Funding Availability or "NOFA" process). These projects typically provide much higher percentages of affordable housing and deeper income targeting than would be required by the inclusionary housing program.
- Affordable rental housing projects with funding from sources other than City or Agency affordable housing funds, provided at least 40 percent of the units are restricted at affordable rents to households with incomes at less than 60 percent of median, for a period of at least 55 years.
- The reconstruction or rebuilding of housing units damaged or destroyed by natural disaster, provided construction is started within four years and completed within six years of the damage.

- Rehabilitation of existing housing units, unless the estimated cost of rehabilitation is more than 75 percent of the estimated replacement cost after rehabilitation, in which case the project would be treated as new construction.
- Conversion of existing rental units to condominiums (unless it entails substantial rehabilitation that qualifies as new construction as described above).

Inclusionary Requirement

Projects subject to the ordinance would be required to provide 15 percent of the units as affordable housing, using income and rent or sales price limits consistent with California Redevelopment Law. Use of these definitions ensures that inclusionary housing units can be counted toward the affordable housing production requirements for the City's redevelopment project areas.

Inclusionary units must generally be comparable to market rate units in a project and should be distributed throughout the development. Inclusionary units must be developed in tandem with the market rate units.

Affordability Restrictions

Occupancy of inclusionary rental housing would be restricted to low income households with incomes less than 80 percent of area median income (as noted below, consistent with California redevelopment law, rents will be set at levels affordable to households with incomes of 60 percent of median income).

Ownership housing would be restricted to moderate income households (maximum income of 120 percent of median income), and each development would be required to have an average income limit of 100 percent of median income.

These are maximum incomes; based on staff's experience with City-assisted developments, the units can and most likely will be occupied with households with incomes below these limits.

The current income limits are as follows:

INCOME LEVEL	INCOME LIMITS ADJUSTED FOR HOUSEHOLD SIZE					
	One Person	Two Persons	Three Persons	Four Persons	Five Persons	Six Persons
60% of Area Median Income	\$35,220	\$40,200	\$45,240	\$50,280	\$54,300	\$58,320
80% of Area Median Income (Low Income)	\$46,350	\$53,000	\$59,600	\$66,250	\$71,550	\$76,850
100% of Area Median Income (Median Income)	\$58,700	\$67,000	\$75,400	\$83,800	\$90,500	\$97,200
120% of Area Median Income (Moderate Income)	\$70,440	\$80,400	\$90,480	\$100,560	\$108,600	\$116,640

Length of Affordability Restrictions

Rental units would be required to remain affordable for 55 years.

Ownership units would be required to remain affordable for 45 years (except in some cases for units made available to Oakland teachers; see below).

Affordable Rents

All inclusionary rental units would be required to have rents that do not exceed 30 percent of 60 percent of area median income, which is consistent with State law definitions of housing affordable to low income households.


Based on current median income, the maximum allowable rents would be as follows (and must be further adjusted downwards by an allowance for utilities paid by the tenant).

Maximum Allowable Rents				
0 Bdrm	1 Bdrm	2 Bdrm	3 Bdrm	4 Bdrm
\$880	\$942	\$1,131	\$1,307	\$1,458

These rents are substantially below the rents that are projected for many of the market rate developments currently proposed or underway in the City.

Affordable Sales Prices

Sales prices will be established using formulas prescribed by California redevelopment law to determine affordable housing cost, which takes into account mortgage payments, hazard insurance, taxes, homeowners' association dues, utilities and an allowance for maintenance. Currently these formulas result in the following sales prices for households earning no more than 100 percent of median income.



\$143,290	\$170,970	\$198,983	\$226,997	\$249,340
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These prices are substantially lower than market prices for new ownership units. It should be noted that in practice, based on underwriting practices of most mortgage lenders, these sales prices are affordable to households at incomes less than median income. Experience with the City's own assisted homeownership developments shows that units are typically purchased by families with incomes below the maximum income limit.

In addition, households with incomes less than 80 percent of median income could use the City's first-time homebuyer assistance program to purchase inclusionary ownership units.

Alternative: Off-Site Development

Developers could also meet the inclusionary requirement by building a higher percentage of units (20 percent) on some other site in the City. Off-site units would be required to be comparable to any units that would be required on site.

Alternative: In-Lieu Fee

Developers could choose to pay an in-lieu fee equal to the full amount of the "financing gap," defined as the difference between the total cost to develop comparable units off site and (a) for ownership housing, the affordable sales prices, or (b) for rental housing, the amount of debt that can be supported by affordable rents. The fee would be required to be paid for each affordable unit that would be required if the developer built off-site inclusionary units (i.e., 20 percent of the total units in the market-rate project). For example, for a project containing 100 2-bedroom market rate units, the in-lieu fee would be  $20 \times \$265,000 = \$5,300,000$ .

The ordinance requires that the City hire a consultant to conduct and complete a study by December 31, 2006 to establish the appropriate fee amount. The fee would be indexed annually to increases in residential construction costs, and the City could conduct new studies periodically as needed to recalibrate the fee.

Until the study is completed, the proposed ordinance sets an initial fee based on staff's estimate of the "financing gap" based on projects recently funded under the City's annual affordable housing funding competition.



**Initial In-Lieu Fee Pending Completion of Study**

0 Bedroom	\$ 195,000
1 Bedroom	\$ 240,000
2 Bedroom	\$ 265,000
3 Bedroom	\$ 305,000
4 Bedroom	\$ 315,000

Use of In-Lieu Fees

In-lieu fees would be deposited to the Affordable Housing Trust Fund first established by the Jobs/Housing Impact Fee Ordinance in July 2002.

Fees would be reserved for development of housing projects affordable to low and very low income households, subject to approval by the City Council, with a preference for units serving very low income households (less than \$41,900 per year for a family of four).

Twenty percent of in-lieu fees would be set-aside for a new Teacher Mortgage Assistance Program described below, which would be affordable to households up to 100 percent of median income.

A portion of the in-lieu fees could also be used to pay reasonable costs of administering, monitoring and enforcing the inclusionary housing program.

Prohibition on Use of Affordable Housing Funds

The ordinance prohibits the use of federal, state or local affordable housing funds to provide inclusionary units. Such funds could be used to provide additional affordable units above the minimum required by the ordinance, or to provide a deeper level of affordability than that required by the ordinance. Rental projects whose sole source of affordable housing funds is tax-exempt bond proceeds or 4 percent low income housing tax credits would not be subject to this limitation provided that at least 20 percent of the units are rented to very low income households (less than \$41,900 per year for a family of four) at an affordable rent.

New Teacher Homeownership Programs

The ordinance provides for the creation of two new programs designed to provide homeownership opportunities as an incentive for teachers to remain within the Oakland Unified School District.

The first program would require 20 percent of most ownership inclusionary units, whether built on-site or off-site, to be marketed to Oakland teachers. The units would be sold initially at the same affordable prices described above. If the teacher continues working in the Oakland Unified School District for the next five years, the sales price restrictions will be removed, and in years six through ten the teacher/homeowner would receive an increasing share of the appreciation in the market value of the unit. After 10 years, the City would be

repaid only the amount that represents the initial gap between market rate and the affordable sales price, with all of the increase in market value going to the owner.

California redevelopment law does not permit ownership units that are not subject to the full 45-year resale restrictions from being counted towards the Agency's affordable housing production requirements. As a result, the requirement for teacher housing would apply only to *on-site or off-site inclusionary units built outside those redevelopment project areas that have affordable housing production obligations.*

The second program would use 20 percent of the in lieu fee revenues to fund first time homebuyer loans to assist teachers with the purchase of units anywhere in the City. The loans would be structured with provisions similar to those just described for construction of teacher housing.

Both programs differ from existing City homebuyer programs because (a) they would provide greater amounts of financial assistance (up to the entire "financing gap" as described in the discussion on in-lieu fees), and (b) after ten years there would be no interest or shared appreciation due the City.

These programs are intended to provide financial incentives for teachers to remain in the OUSD and to reduce the rate of teacher turnover in the District.

#### Implementation, Monitoring and Enforcement

The ordinance contains provisions that would authorize staff to implement the program, monitor the affordable housing units for ongoing compliance, and enforce the requirements for long term affordability.

Developers will be required to submit an inclusionary housing plan as part of their first application for a development-related permit from the City. The permit cannot be approved unless the inclusionary housing plan is approved. The inclusionary obligations will be enforced through regulatory agreements, resale controls, or similar restrictions recorded against the inclusionary housing units.

The City would be able to take a range of actions to enforce the ordinance, including revoking development approvals and assessing a fine equal to the full amount of the in-lieu fee otherwise required for the project.

The proposed ordinance also allows third parties (including members of the public) to sue project owners if they fail to comply with the requirements of the ordinance.

Finally, the ordinance grants the City Administrator the authority to develop regulations and procedures for implementing the ordinance.

## RECOMMENDATIONS AND RATIONALE

For many years, development conditions in Oakland were not conducive to adoption of inclusionary housing requirements. During the 1990s there was very little unsubsidized housing development except for rebuilding of homes destroyed in the 1991 Oakland Hills firestorm. Since 1999, however, there has been a substantial increase in development of market rate housing throughout many areas of the city, including areas that had not seen new development for many decades. Over 2,000 market rate units have been completed in this period, with thousands more under construction, approved, or in the planning stages. Competition for land has become so strong that developers are now seeking to convert industrial land in many parts of the City to residential uses.

Given the continued strength of the market for new housing development, it appears that conditions are more conducive to adoption of an inclusionary housing ordinance. It is anticipated that the market will be able to absorb the costs of the proposed requirements without jeopardizing the feasibility of continued development.

The proposed inclusionary housing program should be viewed as one component of a City's overall housing strategy. The program will serve as a complement to other affordable housing efforts, including preservation of existing assisted rental housing serving very low and extremely low income households; development of new assisted housing for extremely low, very-low, low and moderate income households; first-time homebuyer assistance for low income households; rehabilitation loans for very low and low income homeowners; and the public housing and Section 8 programs operated by the Oakland Housing Authority and targeted to the very lowest income households.

Oakland currently invests substantial amounts of money to assist in the development of affordable housing, most of it to very low and low income households. In 2001, the Agency increased the affordable housing set-aside from the legally-required 20 percent of tax increment funds to a figure of 25 percent, effectively increasing the Agency's efforts by one-fourth. In 2000, the Agency issued \$40 million in bonds backed by those affordable housing funds; all of those funds have been spent or are committed to projects that are underway. Earlier this year, the Agency issued a second round of affordable housing bonds that yielded another \$55 million. Combined with existing HOME and tax increment funds, this allowed the City and Agency to provide funding of \$40 million to 11 projects in this year's affordable housing funding allocation, mostly for rental housing serving households with incomes between 25 percent and 60 percent of median income. There is a balance of \$35 million available for future projects.

Since 1999, over 1,200 units of affordable housing have been constructed or substantially rehabilitated with City financial assistance. An additional 1,000 units are in the development pipeline. This does not include more than 650 units of existing assisted housing that is being rehabilitated and preserved with affordability restrictions for another 55 years, including the

these units are affordable to households with incomes less than 80 percent of median income (most less than 60 percent), and more than half are affordable to households with incomes less than 50 percent of median; many are affordable to households earning less than 30 percent of median income.

Despite these substantial efforts, the City has not been able to meet all of its affordable housing needs, and in recent years there has been growing pressure to devote an increasing share of these funds to support ownership housing for moderate income households. The enactment of an inclusionary housing ordinance provides the City with another tool to meet the need for low income rental housing and moderate income homeownership. This would allow the City to better target its own affordable housing funds, including some of the in-lieu fees generated by inclusionary housing, to extremely low and very low income households while still maintaining balance across its overall housing program.

## **SUSTAINABLE OPPORTUNITIES**

Economic The economic impact of inclusionary zoning is difficult to gauge. There are no empirical studies, but the experience of other cities that have inclusionary requirements suggests that a well crafted inclusionary housing program does not reduce development activity.

Environmental Inclusionary zoning can serve to further sustainable development and smart growth policies by *encouraging higher density development in appropriate locations, when zoning constrains density*. This is because inclusionary units are often made feasible through such mechanisms as density bonuses and higher density development. In areas of Oakland, where allowable density is not a barrier, there would be little environmental benefit because inclusionary zoning probably would not lead to higher densities.

Equity Inclusionary zoning promotes greater housing opportunities for economically disadvantaged segments of the population. In addition, by producing mixed income housing, it contributes to a more equitable distribution of affordable housing and may help to reduce concentrations of lower income people while also providing safeguards against displacement caused by development in gentrifying areas.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

To the extent that inclusionary zoning results in production of more affordable housing, it will also produce more affordable housing opportunities for low income seniors and persons with disabilities.

**ACTION REQUESTED OF THE CITY COUNCIL**

It is recommended that the City Council adopt the proposed ordinance, which would establish an inclusionary housing obligation, authorize the creation of two new homeownership programs for Oakland teachers, make necessary technical amendments to the Planning Code, amend provisions of the Municipal Code to allow in-lieu fees to be deposited to the Affordable Housing Trust Fund, establish an initial in-lieu fee, and require staff to hire a consultant to complete an in-lieu fee study by December 31, 2006.

Respectfully submitted,



**DANIEL VANDERPRIEM**

Director of Redevelopment, Economic  
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Reviewed by: *SKA*  
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Programs Coordinator  
Housing & Community Development Division

APPROVED AND FORWARDED TO THE  
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:

  
**OFFICE OF THE CITY ADMINISTRATOR**

**Attachment A  
Summary of Key Provisions of Inclusionary Housing Ordinance**

Units Covered	<ul style="list-style-type: none"> <li>• Housing developments with at least 20 units (including loft and live/work conversions of non-residential buildings)</li> <li>• Applies to units that gain vested development rights after May 1, 2007</li> </ul>
On-site inclusionary units required	<ul style="list-style-type: none"> <li>• 15% of total units in project</li> </ul>
Off-site inclusionary units required	<ul style="list-style-type: none"> <li>• 20% of total units in project</li> </ul>
Affordability Levels – Ownership Housing	<ul style="list-style-type: none"> <li>• Maximum income = 120% of median income (moderate income); average income limit within each project not to exceed 100% of median income</li> <li>• Sales prices affordable to same income ranges using Redevelopment Law formula</li> </ul>
Affordability Levels – Rental Housing	<ul style="list-style-type: none"> <li>• Maximum income = 80% of median income (low income)</li> <li>• Rents set at 30% of 60% of median income using Redevelopment Law formula</li> </ul>
Term of Affordability Controls	<ul style="list-style-type: none"> <li>• 45 years for ownership housing</li> <li>• 55 years for rental housing</li> </ul>
Timing and Comparability	<ul style="list-style-type: none"> <li>• Inclusionary units must be developed and marketed no later than market-rate units</li> <li>• Inclusionary units must be generally comparable to market rate units</li> <li>• Units should be distributed throughout the development to avoid economic segregation</li> </ul>
In-Lieu Fees	<ul style="list-style-type: none"> <li>• Based on full subsidy required to reduce development cost to the affordable sales prices or rent levels</li> <li>• City consultant to complete an in-lieu fee study no later than December 31, 2006</li> <li>• Fees indexed to annual increases in construction costs, with in-lieu fee study updated periodically as needed</li> <li>• Fees deposited to Affordable Housing Trust Fund for affordable housing only</li> </ul>

Use of Federal, State or Local Affordable Housing Funds	<ul style="list-style-type: none"> <li>• Prohibited, except for tax-exempt bonds or 4% tax credits if project provides 20% of units at 50% of median income</li> </ul>
Exemptions	<ul style="list-style-type: none"> <li>• Certain City/Agency sponsored transit village projects</li> <li>• Publicly-assisted rental housing projects funded under City/Agency NOFA or meeting tax-credit requirements (40% at 60% AMI)</li> <li>• Reconstruction of units damaged by natural disaster</li> <li>• Minor and moderate rehabilitation of existing housing</li> <li>• Condominium conversions</li> </ul>
Administration and Enforcement	<ul style="list-style-type: none"> <li>• No permits issued without approved inclusionary housing plan or payment of in-lieu fee</li> <li>• Recorded restrictions to ensure affordability</li> <li>• For non-compliance, City may revoke permits, assess a penalty equal to the full in-lieu fee, or take other actions</li> <li>• Third parties have right to take action to enforce the requirements</li> </ul>
Teacher Housing Programs	<ul style="list-style-type: none"> <li>• 20 percent of inclusionary ownership units (except in certain redevelopment project areas) targeted to Oakland teachers.</li> <li>• 20 percent of in-lieu fees used for homebuyer assistance program for Oakland teachers</li> <li>• Teachers must remain in Oakland school district for 5 years</li> <li>• In years 6 through 10, teachers earn increasing share of appreciation in market value</li> <li>• Principal amount of the price reduction or homebuyer loan repaid to City</li> </ul>

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APPROVED AS TO FORM AND LEGALITY:

  
DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**AN ORDINANCE ADDING CHAPTER 17.109 TO THE OAKLAND PLANNING CODE TO ESTABLISH AN INCLUSIONARY HOUSING REQUIREMENT AND ESTABLISH TWO NEW HOMEOWNERSHIP PROGRAMS FOR OAKLAND TEACHERS, MAKING RELATED AMENDMENTS TO THE OAKLAND PLANNING CODE, AMENDING SECTION 15.68.100 OF THE OAKLAND MUNICIPAL CODE, AND AMENDING THE MASTER FEE SCHEDULE TO ESTABLISH AN INCLUSIONARY HOUSING IN-LIEU FEE**

**WHEREAS**, the City of Oakland adopted a Consolidated Plan for Housing and Community Development dated May 13, 2005 (the "Consolidated Plan"), which found that there is a severe shortage of affordable housing in Oakland; and

**WHEREAS**, the Consolidated Plan found that persons who live and/or work in the City have serious difficulty locating housing at prices they can afford; and

**WHEREAS**, the Consolidated Plan found that existing local, state and federal resources are insufficient to meet the affordable housing need; and

**WHEREAS**, the Association of Bay Area Governments, through its Regional Housing Needs Allocation, estimated that based on anticipated economic growth, the City would experience demand for 3,207 new housing units affordable to low and very low income households between 1999 and 2006; and

**WHEREAS**, the City of Oakland adopted a Housing Element to the General Plan, dated June 14, 2004 (the "Housing Element"), which identified a plan to accommodate the City's share of the housing needs of persons at all income



levels including strategies and programs to maintain and expand the supply of housing affordable to very-low, low and moderate income households; and

**WHEREAS**, despite substantial investments of Federal HOME funds and funding from the Redevelopment Agency's Low and Moderate Income Housing Fund, the City has not been able to produce all the units called for in the Regional Housing Needs Allocation; and

**WHEREAS**, the California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.) requires that in redevelopment project areas adopted on or after January 1, 1976, redevelopment agencies must ensure that at least 15 percent of newly constructed and substantially rehabilitated housing development be affordable to very-low, low and moderate income households; and

**WHEREAS**, rising land prices in Oakland have been a key factor in preventing development of new affordable housing; and

**WHEREAS**, new housing construction in the City that does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land and increasing the price of remaining residential land; and

**WHEREAS**, the Final Report of the Housing Development Task Force, which was adopted by the City Council in July 2000, included a recommendation to adopt a residential inclusionary zoning ordinance; and

**WHEREAS**, on May 15, 2001, staff presented the City Council with an overview of residential inclusionary housing and the issues associated with the feasibility of implementing such a program in Oakland; and

**WHEREAS**, on December 9, 2003, staff provided the City Council with a summary of key findings of a comprehensive survey of inclusionary housing published in 2003 by the Non-Profit Housing Association of Northern California (NPH) and the California Coalition of Rural Housing (CCRH); and

**WHEREAS**, the City wants to balance the burden on private property owners with the demonstrated need for affordable housing in the City by joining over 100 California cities that currently have some form of inclusionary housing requirement and apply an inclusionary housing requirement to all covered development projects containing 20 housing units or more; and

**WHEREAS**, an inclusionary housing requirement will serve as one component of the City's overall housing strategy and will complement other affordable housing efforts, including preservation of existing assisted housing, development of new assisted housing with public subsidies, first-time homebuyer assistance, rehabilitation loans for low income homeowners and the public housing and Section 8 programs operated by the Oakland Housing Authority and targeted to the very lowest income households; and

**WHEREAS**, the Inclusionary Housing Ordinance will provide rental units affordable to households earning no more than 80 percent of area median income and ownership units affordable to moderate income households with an average income of no more than 100 percent of area median income, thus allowing the City to target its limited affordable housing dollars to extremely low, very low and low income households who have the greatest housing needs and require the greatest subsidies; and

**WHEREAS**, City staff performed a preliminary affordable housing gap analysis to determine the appropriate in-lieu fee for the inclusionary housing ordinance; and

**WHEREAS**, on April 25, 2006, the Community and Economic Development Committee received and considered a report on inclusionary housing and directed staff to prepare a draft Inclusionary Housing Ordinance based on the recommendations of Council President Ignacio De La Fuente, Councilmember Jane Brunner and Vice Mayor Jean Quan; and

**WHEREAS**, the City Council has received and considered the staff report accompanying this Ordinance; now therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** This Ordinance shall be known as the "Inclusionary Housing Ordinance."

**SECTION 2.** Chapter 17.109 is hereby added to the Oakland Planning Code to read as follows:

### **Chapter 17.109**

#### **INCLUSIONARY HOUSING REQUIREMENTS**

##### **17.109.010 Title, Purpose, Applicability**

This chapter shall be known as the Inclusionary Housing Requirements. The purpose of this chapter is to establish an inclusionary housing program for the City of Oakland to ensure that development projects that include market rate housing units provide units affordable to households of low and moderate income distributed throughout the City's various neighborhoods. These requirements shall apply to projects that construct or establish housing units in all parts of the City.

##### **17.109.020 Definitions**

As used in this chapter, the following terms have the following meanings:

"AMI" or "area median income" means the area median income for the Oakland area as determined by the California Department of Housing and Community Development pursuant to California Health and Safety Code Section 50093.

households with an average income of not more than 100% of area median income as further described in Section 17.109.100 (Affordability Level and Housing Cost) .

"Affordable housing cost" means an annual housing cost that does not exceed 35 percent of the maximum allowable income specified in Section 17.109.100 (Affordability Level and Housing Cost), adjusted for family size appropriate to the unit pursuant to California Health and Safety Code Section 50052.5, and is not less than 28 percent of the actual gross income of the household. "Housing cost" shall include those items set forth in 25 California Code of Regulations Section 6920.

"Affordable rent" shall be as defined in California Health and Safety Code Section 50053(b)(3), and its implementing regulations.

"Affordable sales price" means the sales price of a housing unit that would permit a household to obtain the unit at an affordable housing cost.

"Agency" means the Redevelopment Agency of the City of Oakland.

"City" means the City of Oakland.

"City Administrator" means the City Administrator of the City of Oakland or his or her designees.

"Covered development project" means any facility that includes the construction or establishment of one or more housing units. A change in tenure (rental or ownership) shall not in itself constitute construction or establishment of a housing unit.

"Housing unit" means a living unit within the meaning of Section 17.090.040 of the Planning Code, a joint living and work quarter within the meaning of Section 17.202.190B of the Planning Code, or a joint residential-oriented living and working quarter within the meaning of Section 17.102.195B of the Planning Code.

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

"In-lieu Fee" means a fee to be paid in the amount described in Oakland's Master Fee Schedule as an alternative to providing on-site or off-site inclusionary units.

"Inclusionary housing plan" means that inclusionary housing plan required under Section 17.109.170 (Inclusionary Housing Plan).

"Inclusionary unit" means a housing unit that must be offered at an affordable rent to low income households, or sold at an affordable sales price to moderate income households, as further specified in Section 17.109.110 (Affordability Level and Housing Cost).

"Low income household" shall be as a "lower income household" is defined in California Health and Safety Code Section 50079.5 and its implementing regulations.

"Market rate units" means housing units constructed in the principal project that are not subject to sales or rental restrictions.

"Moderate income household" shall be as "persons and families of low or moderate income" is defined in California Health and Safety Code Section 50093 and its implementing regulations.

"Off-site unit" means an affordable housing unit constructed pursuant to this chapter on a site other than the site of the principal project.

"On-site unit" means an affordable housing unit constructed pursuant to this chapter on the site of the principal project.

"Ownership unit" means a housing unit that serves or is intended to serve as the primary residence of the owner or owners.

"Principal project" means a covered development project on which a requirement to provide inclusionary units is imposed.

"Project applicant" means any individual, person, firm, partnership, association, joint venture, corporation, limited liability company, entity, combination of entities or authorized representative thereof, who undertakes, proposes or applies to the City for any covered development project.

"Redevelopment project area" means an area governed by a redevelopment plan pursuant to the California Community Redevelopment Law (California Health and Safety Code 33000, et seq.).

"Redevelopment project areas with housing production requirements" means redevelopment project areas subject to the production requirements set forth in California Health and Safety Code Section 33413(b).

"Site" means a parcel or parcels of land which is or may be developed or utilized for a covered development project.

"Transit village development" means a covered development project located within 1,000 feet of a Bay Area Rapid Transit (BART) station.

#### **17.109.030 Application**

This chapter shall apply to all covered development projects with 20 or more new housing units, unless the covered development project has acquired or will acquire vested rights to develop under California law on or before May 1, 2007, or unless the covered development project qualifies for an exemption listed in Section 17.109.040 (Exemptions).

#### **17.109.040 Exemptions**

This chapter shall not apply to any of the following:

- (1) Transit village development projects that are subject to an executed Disposition and Development Agreement or Owner Participation Agreement with the City or Agency.
- (2) The reconstruction or rebuilding of any housing units that have been damaged or destroyed by fire, flood, earthquake or other act of nature unless the damaged or destroyed housing were inclusionary units. Such reconstruction or rebuilding must be commenced no later than four years and completed no later than six years from the date of the damage or destruction.
- (3) A covered development project that is subject to affordability restrictions recorded by the City or the Agency pursuant to funding through the City and Agency's competitive affordable housing funding process.
- (4) A covered development project containing rental units where at least 40 percent of the rental units are restricted for at least 55 years to households with incomes not exceeding 60 percent of AMI, adjusted for household size, with rents not exceeding 30 percent of 60 percent of AMI, adjusted for household size.
- (5) The rehabilitation of existing housing units in which the estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation. Housing units newly constructed or established as part of a project that also includes rehabilitation of existing housing units are not exempt.

#### **17.109.050 On-Site Inclusionary Housing Requirements**

For covered development projects covered by Section 17.109.030 (Application), at least 15 percent of all housing units in the covered development project must be affordable housing, with that affordable housing subject to the occupancy restrictions, affordability levels, and terms of affordability set forth in Section 17.109.110 (Affordability Level and Housing Cost). This requirement may be applied no more than once to an approved covered development project, regardless of changes in the character or ownership of the project, provided the total number of housing units does not change.

As an alternative, a project applicant may satisfy the inclusionary requirement of this section through development of off-site units pursuant to Section 17.109.060 (Off-Site Inclusionary Housing), payment of an inclusionary in-lieu fee pursuant to Section 17.109.150 (In-Lieu Fee), or a combination of these alternatives that at least equals the cost of providing off-site inclusionary units.

#### **17.109.060 Off-Site Inclusionary Housing**

A project applicant may elect to build affordable housing units on a site other than the site of the principal project to satisfy the requirements of this chapter. If the project applicant selects this alternative, the number of affordable units developed off-site must be no fewer than 20 percent of all housing units constructed on the principal project site.

Off-site units shall be subject to all applicable provisions of this chapter, and shall have the same tenure (rental or ownership) as the housing units in the principal project.

If off-site units are provided in another covered development project subject to the requirements of this chapter, the housing units that qualify as off-site units shall not be included when determining the number of inclusionary housing units required in that covered development project.

#### **17.109.070 Fractional Units**

When the inclusionary housing calculation for on-site or off-site units produces a fractional number of units, the project applicant shall (1) round up to the next whole number, in which case that resulting number of affordable units shall be provided as set forth in this chapter, or (2) pay a pro-rata share of the in-lieu fee as set forth in Section 17.109.150 (In-Lieu Fee) for the fractional unit.

#### **17.109.080 Prohibition of Affordable Housing Development Subsidies**

No housing unit shall be counted as an inclusionary unit pursuant to this chapter if it receives a development subsidy from any federal, state or local program, including City or Agency programs, established for the purpose of providing affordable housing, to fund the inclusionary units required by this chapter, except to the extent such subsidies are used only to increase the level of affordability of the housing unit beyond the level of affordability required by this chapter. Housing units assisted only with tax-exempt bond financing or 4% low income housing tax credits shall be exempt from the provisions of this section, provided that such units are rented to and occupied only by very low income households as defined in California Health and Safety Code Section 50105 at rents that do not exceed an affordable rent for a very low income household adjusted for family size appropriate for the unit pursuant to California Health and Safety Code Section 50053(b)(2).

#### **17.109.090 Timing of Provision of Inclusionary Units**

On-site and off-site inclusionary housing units required by Sections 17.109.050 and 17.109.060 must be constructed, completed, and ready for occupancy no later than the market rate units in the principal project. If the principal project is constructed in phases, the inclusionary units must be constructed in phases in proportion with the market rate units or sooner.

#### **17.109.100 Unit Comparability**

Inclusionary housing units shall be comparable to market rate units in the principal project. The number of inclusionary units of each size, as measured by number of bedrooms per unit, shall be at least proportional to the number of market rate units of each size in the principal project, as measured by number of bedrooms per unit. Exterior appearance and overall quality of construction of the inclusionary units shall be comparable to the market rate units in the principal project. The square footage and interior features of inclusionary units do not need to be same as or equivalent to those in market rate units in the principal project, provided they are of good quality and consistent with then-current standards for new affordable housing. Project applicants shall endeavor to distribute the inclusionary units proportionately among the market rate units,

avoid concentration of inclusionary units; and avoid taking actions that would stigmatize or set apart the inclusionary units.

If the housing units in the principal project do not contain bedrooms separated from the living space, the on-site and off-site units shall be comparable in size according to the following equivalency calculation.

Size of Unit	Equivalent Unit
Less than 550 Square Feet	Zero bedroom unit
551 to 750 Square Feet	One bedroom unit
751 to 1,000 Square Feet	Two bedroom unit
1,001 to 1300 Square Feet	Three bedroom unit
More than 1300 Square Feet	Four bedroom unit

#### 17.109.110 Affordability Level and Housing Cost

##### Rental units

Inclusionary units required by this chapter that are rental housing units must:

- (1) be rented to and occupied only by low income households;
- (2) have rents that do not exceed an affordable rent for a low income household adjusted for family size appropriate for the unit pursuant to California Health and Safety Code 50053(b)(3); and
- (3) be subject to these restrictions on tenant incomes and affordable rents for a period of at least 55 years from the date of initial occupancy.

##### Ownership units:

Inclusionary ownership units required by this chapter that are ownership units must:

- (1) in accordance with the schedule below, be subject to limitations on the maximum allowable income of households buying the inclusionary units such that the mean limit on incomes of households buying ownership inclusionary units produced for a covered development project does not exceed 100 percent of AMI;
- (2) be sold at an affordable sales price in accordance with the schedule below; and
- (3) be subject to these restrictions on affordable sales prices and buyer incomes for a period of at least 45 years from the date of initial sale.

Affordability schedule for ownership units:

<b>Maximum Household Income</b>	<b>Affordable Housing Cost</b>
80 percent of AMI	30 percent of 70 percent of AMI
90 percent of AMI	35 percent of 80 percent of AMI
100 percent of AMI	35 percent of 90 percent of AMI
110 percent of AMI	35 percent of 100 percent of AMI
120 percent of AMI	35 percent of 110 percent of AMI

**17.109.120 Affordability Restrictions**

The occupancy, rent, and sales restrictions imposed by this chapter shall be set forth in a regulatory agreement, affordability agreement, resale controls, declaration of covenants, or similar binding instrument executed by the City and the applicant. Such restrictions shall be recorded against the site or sites containing the inclusionary housing units as covenants running with land, senior in priority to any private liens or encumbrances, and shall be enforceable by the City against the project applicant or the applicant's successors-in-interest to the sites for the full affordability term. Additional restrictions, deeds of trust, rights of first refusal, or other instruments may be required by the City Administrator as reasonably needed to enforce these restrictions. The City Administrator shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the financing of the inclusionary units would be infeasible without said subordination.

**17.109.130 Condominium Projects**

If the principal project is developed pursuant to a condominium map, but the housing units in the project are placed in the rental market rather than being sold, the requirements for rental inclusionary units shall apply.

**17.109.140 Teacher Housing**

For any covered development project producing on-site or off-site ownership inclusionary units located outside of a redevelopment project area with housing production requirements, no fewer than 20 percent of those inclusionary units must be offered for sale first to teachers employed by the Oakland Unified School District or a public charter school in Oakland who are moderate income and otherwise qualify for purchase of the unit under Section 17.109.110 (Affordability Level and Housing Cost).

For units sold to teachers under this section, the owner shall execute a promissory note and the City shall record a deed of trust or other instrument upon the owner's purchase to evidence and secure payment to the City of an amount equal to the difference between the inclusionary unit's fair market value and the affordable sales price for the unit, subject to the shared appreciation provisions below. If the owner of the inclusionary unit remains a teacher employed by the Oakland Unified School District or a public charter school in Oakland for at least five years and continues to occupy the unit as his or her principal residence throughout that period, the City may then remove the 45-year resale restrictions required under Section 17.109.120 (Affordability Restrictions), and the owner shall then be subject only to the repayment and shared appreciation provisions below. If the owner does not remain a teacher as defined above for the five-year period, or the owner sells the



inclusionary unit within this five-year period, the 45-year resale restrictions shall remain on the inclusionary unit.

#### Repayment and Shared Appreciation

After the five-year period referenced above, and after the City has removed the resale restrictions from the inclusionary unit, the owner may sell the inclusionary unit at market rate. However, upon sale of the inclusionary unit or default under any of the conditions imposed in accordance with this chapter, (1) the owner shall repay to the City the full amount of the promissory note at the time of sale, and (2) the City and the owner shall share any increase in the fair market value of the inclusionary unit above its fair market value at the time the owner purchased the unit. Beginning in the 6th year of occupancy, the owner shall be entitled to receive 20 percent of the increase in fair market value of the inclusionary unit after deducting an allowance for reasonable and customary selling costs paid by the owner, and the City shall receive the balance. The owner shall be entitled to receive an additional 20 percent of the increase in fair market value for each additional year that the owner occupies the inclusionary unit, up to a maximum of 100 percent of the increase in fair market value.

Any payments received by the City hereunder shall be deposited into the Affordable Housing Trust Fund established pursuant to Section 15.68.100 of the Oakland Municipal Code.

#### **17.109.150 In-Lieu Fee**

The requirements of this chapter may be satisfied by paying an in-lieu fee for each unit that would be required if the applicant were to provide off-site inclusionary units pursuant to Section 17.109.060. The in-lieu fee for each inclusionary unit shall be established by the City based on an estimate of the total subsidy required to make units comparable to inclusionary units affordable at the rents or sales prices required by Section 17.109.110 (Affordability Level and Housing Cost). The total subsidy required shall be estimated based on the difference between the estimated cost of developing an inclusionary unit and

- (1) for an ownership inclusionary unit, an affordable sales price; or
- (2) for a rental inclusionary unit, the amount of debt that can be supported by a unit with an affordable rent after payment of operating expenses and a reasonable deposit to reserves.

The initial in-lieu fee shall be established in the City's Master Fee Schedule by the unit size by bedroom, and may be periodically adjusted.

No building permit shall be issued for any residential development that elects to pay an in-lieu fee pursuant to this section until the fee is paid to the City.

### **17.109.160 Deposit and Use of Fees**

All in lieu fees collected by the City pursuant to this chapter shall be deposited to the Affordable Housing Trust Fund established pursuant to Section 15.68.100 of the Oakland Municipal Code.

Twenty percent of the in-lieu fee monies shall be designated for an Oakland Teacher Mortgage Assistance Program to be established by the City. The program shall provide teachers employed by the Oakland Unified School District or a public charter school in Oakland with loans to assist in the purchase of ownership units, with shared appreciation provisions comparable to those provided in Section 15.109.140 above.

A portion of the in-lieu fees generated pursuant to this chapter may be used to pay for the City's costs of monitoring and enforcing this chapter.

### **17.109.170 Inclusionary Housing Plan**

A project applicant must include as part of its first application to the City for a development-related permit or approval an inclusionary housing plan that includes outlining the methods by which the project applicant proposes to meet the requirements of this chapter.

The City shall approve, conditionally approve or reject the proposed inclusionary housing plan as part of its decision on the development-related permit or approval. No application for a development-related permit or approval, including without limitation, a tentative map, parcel map, conditional use permit, Planned Unit Development (Preliminary and Final), Master Plan, variance, design review, or building-related (grading, demolition, building) permit to which this chapter applies may be deemed complete until an inclusionary housing plan is submitted to the City. The inclusionary housing plan must include, at a minimum, the following:

- (1) the location, type of structure (attached, semi-attached, or detached), proposed tenure (ownership or rental), and size of the proposed market-rate units, commercial space and/or inclusionary units and the basis for calculating the number of inclusionary units;
- (2) a floor and site plan depicting the location of the inclusionary units;
- (3) the income levels to which each inclusionary unit will be made affordable;
- (4) for phased covered development projects, a phasing plan that provides for the timely development of the number of inclusionary units proportionate to each proposed phase of development as required by Section 17.109.100 (Unit Comparability) of this chapter;
- (5) any alternative means proposed to meet the inclusionary housing requirement; and
- (6) any other information reasonably requested by the City to assist with evaluation of the plan under the standards of this chapter.

### **17.109.180 Enforcement and Remedies**

This chapter may be enforced pursuant to the provisions of Oakland Planning Code Chapter 17.152 (Enforcement).

A project applicant's failure to comply with the requirements of this chapter shall constitute cause for the City to assess a penalty against the applicant or owner in an amount equal to, at a minimum, the current in-lieu fee provided for under this chapter, as adjusted under this section.

### **17.109.190 Third Party Rights of Action**

If any project applicant violates any provision of this chapter, any person, individually or by class action, may seek relief in a court of appropriate jurisdiction, including injunctive relief, declaratory relief and damages. In any such court proceeding, the prevailing party shall be awarded his or her reasonable attorneys' fees.

### **17.109.200 Reductions, Adjustment, Waivers and Appeals**

A project applicant may request a reduction, adjustment, or waiver of the requirements imposed by this chapter at the time of application. To receive a reduction, adjustment or waiver, the project applicant must demonstrate that it meets one of the following criteria:

- (1) That there is an absence of any reasonable relationship or nexus between the impact of the development and either the inclusionary requirement or the amount of the in-lieu fee charged;
- (2) That the inclusionary requirement would deprive the project applicant of all economically viable use of the property or constitute a taking of the project applicant's property; or
- (3) That application of this chapter to the principal project would otherwise violate either the California or the United States Constitutions.

Any such request, and all supporting materials, shall be made in writing and filed with the City as part of the application for the first development-related permit or approval for the principal project. The request shall set forth in detail all the factual and legal basis for the claim of reduction, adjustment, or waiver. The City shall consider the request along with consideration of the underlying permit or approval application. The project applicant shall bear the burden of presenting appropriate evidence to support the request, including comparable technical information to support applicant's position. If a reduction, adjustment, or waiver is granted, any subsequent change in the approved use within the project shall invalidate the adjustment, reduction or waiver of the fee or inclusionary requirement.

If a request for a reduction, adjustment, or waiver is denied, the project applicant may appeal that decision by following the appeals procedure established for denial of the underlying permit or approval.

If no appeal procedure is provided for the underlying permit or approval, then the applicant may appeal the request for a reduction, adjustment, or waiver to the City Planning Commission within ten calendar days after the date of a decision. In the event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the City Planning Department and shall be filed with such Department. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the City or wherein its decision is not supported by the evidence in the record. Upon receipt of the appeal, the Secretary of the City Planning Commission shall set the date for consideration thereof. Not less than ten days prior to the date of the Commission's consideration of the appeal, the Secretary shall give written notice to the project applicant/appellant, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. In considering the appeal, the Commission shall determine whether the project applicant/appellant has met its burden and may grant or deny the requested reduction, adjustment, or waiver or require such changes in the Inclusionary Housing Plan or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria. The decision of the City Planning Commission is final and not subject to administrative appeal.

#### **17.109.210 Incentives**

A project applicant may be entitled to a density bonus and incentives or concessions under the California Density Bonus Law (Government Code Section 6519, et seq.) in return for producing inclusionary units, if and to the extent provided for under the Density Bonus Law. For purposes of calculating the number of inclusionary units required under this chapter, any additional housing units authorized as a density bonus under the Density Bonus Law will not be counted as part of the covered development project.

#### **17.109.220 Administrative Regulations**

Notwithstanding any other provision in the Planning Code, the City Administrator is hereby authorized to adopt administrative rules and regulations consistent with this chapter as needed to implement this chapter, and to make such interpretations of this chapter as he or she may consider necessary to achieve the purposes of this chapter. Such rules and regulations may include, without limitation, methods and criteria for certifying incomes of prospective tenants or purchasers of inclusionary units, a method for calculating affordable sales prices, selection, occupancy and rent-setting standards, methods of imposing and monitoring affordability restrictions on inclusionary units, procedures and criteria for reviewing inclusionary housing plans, and guidelines for implementation of the teacher housing programs described in Sections 17.109.140 (Teacher Housing) and 17.109.150 (In-Lieu Fee).

**SECTION 3.** The record before this Council relating to this Ordinance and supporting the findings made herein includes, without limitation, the following:

1. Association of Bay Area Governments, Regional Housing Needs Determinations: 1999-2006 Housing Element Period, third official release dated June 1, 2000.
2. The report to City Council titled "Informational Report on the Final Recommendations of the Housing Development Task Force" and dated July 18, 2000.
3. The report to City Council titled "An informational staff report on inclusionary zoning programs for affordable housing" and dated May 15, 2001
4. California Coalition for Rural Housing and Non-Profit Housing Association of Northern California, "Inclusionary Housing in California: 30 Years of Innovation," 2003.
5. The report to City Council titled "A staff report describing inclusionary zoning programs in other California jurisdictions and a recommendation that the City Council not take any further action on inclusionary zoning" and dated December 9, 2003.
6. "City of Oakland Housing Element", dated June 14, 2004.
7. "Consolidated Plan for Housing and Community Development" dated May 13, 2005.

**SECTION 4.** The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision, and are hereby adopted as findings.

**SECTION 5.** The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) the Community and Economic Development Agency, Housing and Community Development Division, 250 Frank H. Ogawa Plaza, 5th floor, Oakland, California; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, California.

**SECTION 6.** The provisions of this Ordinance are severable, and if any clause, sentence, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is held to be invalid or preempted by state or federal law, such holding shall not impair or invalidate the remainder of this Ordinance. If any provision of this Ordinance is held to be inapplicable to any specific development project or applicant, the provisions of this Ordinance shall nonetheless continue to apply with respect to all other covered development projects and applicants. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

**SECTION 7.** The City Council finds and determines that this Ordinance complies with the California Environmental Quality Act (CEQA) based upon the following, each of which provides a separate and independent basis, (1) reliance upon the Environmental Impact Report prepared for the Land Use and Transportation Element of the General Plan that was certified by the City Council on March 24, 1998; (2) reliance upon the Environmental Impact Report prepared for the Estuary Policy Plan that was certified by the City Council on June 8, 1999; (3) reliance upon the Mitigated Negative Declaration prepared and approved for the Housing Element of the General Plan on

June 14, 2004; (4) CEQA Guidelines section 15061(b) (3); and (5) CEQA Guidelines section 15183.

**SECTION 8.** The Oakland Master Fee Schedule is hereby amended to provide for the following initial inclusionary housing in-lieu fee:

<b>Unit Size By Bedroom</b>	<b>In-Lieu Fee</b>
0 Bedroom	\$ 195,000
1 Bedroom	\$ 240,000
2 Bedroom	\$ 265,000
3 Bedroom	\$ 305,000
4 Bedroom	\$ 315,000

No later than December 31, 2006, the City shall retain a consultant and complete a study to determine an appropriate in-lieu fee in accordance with the provisions of Section 17.109.150 (In-Lieu Fee) of the Inclusionary Housing Requirements and the above fee shall then be adjusted by ordinance if warranted. The City may update this study periodically as necessary.

In lieu of such periodic updates of the in-lieu fee study, the fee shall be adjusted annually according to the provisions for annual increases in the Jobs/Housing Impact Fee contained in Section 15.68.050 of the Municipal Code.

**SECTION 9.** Section 15.68.100 of the Municipal Code (Affordable Housing Trust Fund) is hereby amended to add the following:

Twenty percent of funds deposited to the Affordable Housing Trust Fund as a result of in-lieu fees collected pursuant to Section 17.109.150 of the Oakland Planning Code shall be reserved for the Teacher Mortgage Assistance Program authorized by Section 17.109.160 of the Oakland Planning Code. Any funds received by the City in connection with the Teacher Mortgage Assistance Program shall also be deposited to the Affordable Housing Trust Fund for this same purpose. Notwithstanding any other provision contained in this chapter, funds reserved for the Teacher Mortgage Assistance Program may be used to assist persons and families of moderate income as defined in California Health and Safety Code Section 50093 and its implementing regulations.

**SECTION 10.** The first sentence of the third paragraph of Section 15.68.100 of the Municipal Code (Affordable Housing Trust Fund) is hereby amended to read as follows (additions are indicated by underlined text):

Funds may also be used to cover reasonable administrative or related expenses of the city not reimbursed through processing fees, including costs of administering or enforcing the Inclusionary Housing Requirements contained in Chapter 17.109 of the Oakland Planning Code.

**SECTION 11.** Section 17.152.070.A of the Oakland Planning Code is amended to add the Inclusionary Housing Ordinance as follows:

1. 17.109.010 through 17.109.220;
42. 17.112.010 through 17.112.060;
23. 17.134.010 through 17.134.120;
34. 17.136.010 through 17.136.130;
45. 17.140.010 through 17.140.120;
56. 17.142.010 through 17.142.090;
67. 17.146.010 through 17.146.060; and,
78. 17.148.010 through 17.148.110

**SECTION 12.** This Ordinance shall be effective upon its adoption if it receives at least six affirmative votes; otherwise, it shall be effective upon the seventh day after final adoption; but as set forth above shall not be applied to covered development projects that have acquired or will acquire vested rights to develop under California law on or before May 1, 2007.

**IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2006**

**PASSED BY THE FOLLOWING VOTE:**

**AYES-                    BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL,  
                                  QUAN, REID, AND PRESIDENT DE LA FUENTE**

**NOES-**

**ABSENT-**

**ABSTENTION-**

**ATTEST: \_\_\_\_\_  
                                  LATONDA SIMMONS  
                                  City Clerk and Clerk of the  
                                  Council  
                                  of the City of Oakland, California**

**AN ORDINANCE ADDING CHAPTER 17.109 TO THE OAKLAND PLANNING CODE TO ESTABLISH AN INCLUSIONARY HOUSING REQUIREMENT AND ESTABLISH TWO NEW HOMEOWNERSHIP PROGRAMS FOR OAKLAND TEACHERS, MAKING RELATED AMENDMENTS TO THE OAKLAND PLANNING CODE, AMENDING SECTION 15.68.100 OF THE OAKLAND MUNICIPAL CODE, AND AMENDING THE MASTER FEE SCHEDULE TO ESTABLISH AN INCLUSIONARY HOUSING IN-LIEU FEE**

**NOTICE AND DIGEST**

This Ordinance adds Chapter 17.109 to the Oakland Planning Code to establish an inclusionary housing requirement and establish two new homeownership programs for Oakland teachers, makes certain related amendments to Section 17.052.170.A of the Oakland Planning Code and Section 15.68.100 of the Oakland Municipal Code, makes certain findings in support of its enactment, and amends the City's Master Fee Schedule to establish an inclusionary housing in-lieu fee.



# Attachment J

## In-Lieu Fee Alternative

### October 5th, 2006

**To: Oakland City Council**  
**From: Councilmember Jane Brunner**  
**Re: Attachment J - In-Lieu Fee Alternative**  
**Date: October 5<sup>th</sup>, 2006**

**We are proposing that City Council may consider the following change to the Inclusionary Zoning Ordinance:**

Section 15.68.100 of the Municipal Code (Affordable Housing Trust Fund) is hereby amended to add the following:

Twenty percent of gross funds deposited to the Affordable Housing Trust Fund as a result of in-lieu fees collected pursuant to Section 17.109.150 of the Oakland Planning Code shall be reserved for the Teacher Mortgage Assistance Program authorized by Section 17.109.160 of the Oakland Planning Code. Any funds received by the City in connection with the Teacher Mortgage Assistance Program shall also be deposited to the Affordable Housing Trust Fund for this same purpose. Notwithstanding any other provision contained in this chapter, funds reserved for the Teacher Mortgage Assistance Program may be used to assist persons and families of moderate income as defined in California Health and Safety Code Section 50093 and its implementing regulations. If such monies are not committed to qualified projects or housing units under the Oakland Teacher Mortgage Assistance Program within three years of their receipt, such monies shall be available for use in other affordable housing projects, subject to the limitations of this section. Up to ten percent of the gross in-lieu fees generated pursuant to Section 17.109.150 of the Oakland Planning Code may be used to pay for the City's costs of monitoring and enforcing the Inclusionary Housing Requirements. The remaining in-lieu fee monies collected pursuant to Section 17.109.150 of the Oakland Planning Code shall be used exclusively to fund housing units that serve households at or below **60%** of area median income, with a preference for housing units that serve households at or below 30% of area median income.